109-235

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 882.

G. DE ROSSET LAMAR, EXECUTOR OF GAZAWAY B. LAMAR, DECEASED, APPELLANT,

vs.

CHARLES F. McCAY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JUNE 15, 1883.

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1 United States circuit court, southern district of New York.

CHARLES F. McCAY
vs.
G. DE ROSSETT LAMAR. } In equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Your orator, Charles F. McCay, who is a citizen of the State of Maryland, residing in the city of Baltimore, in said State, brings this *bill of* his bill of complaint against G. De Rossett Lamar, a citizen of the State of New York, residing in the city of New York, and who is the executor of the estate of the late Gazaway B. Lamar, deceased, and complaining respectfully states:

I. That previous to the month of April, 1874, the Richmond Importing and Exporting Company, a body corporate created by and under the laws of the State of Virginia, was the owner of large quantities of cotton purchased and acquired through various agents acting for its benefit, and in its behalf, in the State of Georgia and elsewhere.

II. That among others who were so employed as the agents and fiduciaries of said company was one T. Edward Hambleton, who received
2 from your orator several hundred bales of cotton at Augusta, in the State of Georgia, for said company, the exact number of bales your orator cannot now state, but a portion of which, amounting to several hundred bales, was shipped to Charles A. L. Lamar, now deceased, at Savannah, in the State of Georgia, who received the same from said Hambleton as the property and estate of said company, and ever thereafter held the same for its use and benefit.

III. That among the parcels of cotton so shipped there was a special lot of 244 bales so purchased by said Hambleton, as the agent and fiduciary of said company, and deposited with said Charles A. L. Lamar, who subsequently departed this life, when his father, the said Gazaway B. Lamar, administered upon the estate of said Charles, and in that capacity came into possession of said cotton, or a portion thereof, and ever thereafter retained possession of said cotton, or the proceeds thereof, as the legal representative of the said Charles A. L. Lamar, and as the agent and fiduciary of said company and your orator, as will be hereinafter stated.

IV. That subsequently to the time last above mentioned the said cotton was taken possession of by the Government of the United States through its agents, shipped to New York, and there sold, and the proceeds thereof paid into the Treasury of the United States.

V. That subsequently to the time of such sale and deposit the late Gazaway B. Lamar, from whose possession said cotton was taken, together with other large lots claimed by him, brought suit for the recovery of the proceeds thereof in the United States Court of Claims, where it was docketed as number 3222, on the trial docket of said court, to the proceedings in which, and the record thereof, your orator prays leave to refer from time to time, as may be necessary for the purposes of this suit.

VI. That among other portions of said 244 bales of cotton so held by said Gazaway B. Lamar, as the legal representative of said Charles A. L. Lamar was a lot of 69 bales marked "E T A" or "E T Y," and another

lot of 67 bales marked "X Y Z," making a total of 136 bales which
3 had been delivered by your orator to said Hambleton, and which was held in trust for the use and benefit of said company and your orator as aforesaid.

VII. That in and pending said suit in said Court of Claims said Gazaway B. Lamar, among other quantities and lots of cotton, sued for and claimed said 136 bales last above mentioned, so held in trust as aforesaid.

VIII. That among other proceedings in said suit said Gazaway B. Lamar prepared, printed, signed, and filed in said Court of Claims a summary of the several lots of cotton so owned, held, and claimed by him, amounting to 3,553 bales, which for convenience and certainty he subdivided and numbered in lots from 1 to 28 consecutively, and when referring to the portion of said cotton so placed in the hands of Charles A. L. Lamar, amounting to said 136 bales last above mentioned, in subdivision "26" of said summary statement, he described the same in the words, letters, and figures following, to wit:

"No. 26. 136 bales of upland ('E T A' or 'E T Y' 69, 'X Y Z' 67, received and advanced upon by C. A. L. Lamar, for a person in Virginia, and were rebagged and compressed for the owner. The owner made inquiry for them since the war, but, when informed of their being taken by the United States, declined to pay the advances made upon them. 136 bales uplands.

"This parcel of 136 bales were received and the freight paid by Charles A. L. Lamar, who advanced money upon them; they were taken from the press warehouses and my possession, and constituted a part of the 3,553 bales."

IX. That in due course of law a judgment was rendered in said Court of Claims in favor of said Gazaway B. Lamar for the proceeds of said cotton, or a large portion thereof, to wit, 91 bales of Sea Island cotton, allowing him therefor $231.79 per bale, and 3,184 bales of upland cotton, allowing therefor $175.33 per bale, making in all $579,343.51 adjudged to said Lamar on account of said cotton.

X. That included in said judgment so rendered by said Court of Claims
4 in favor of said Gazaway B. Lamar was the proceeds of said 136 bales of cotton, particularly described in paragraphs VI and VIII of this bill of complaint, which, at $175.33 per bale, the amount allowed by said court for upland cotton, amounted to $23,844.88.

XI. That in the month of April, 1874, the whole amount of said judgment was paid to said G. B. Lamar, who then and there received the said sum of $23,844.88, in trust to the use and benefit of said company and your orator, which said sum has ever since remained in the hands of said G. B. Lamar or this defendant, as his legal representative in like trust, as will be hereinafter stated.

XII. That said company had no knowledge of the recovery and receipt of said sum of $23,844.88 by said G. B. Lamar until after the 19th day of April, 1874, when the said G. B. Lamar published an advertisement in the Richmond Inquirer, a newspaper published in the city of Richmond, in the State of Virginia, the habitat of said company, in the words, letters, and figures following, to wit:

"INFORMATION WANTED.

"Some time in the year 1864, some person in Richmond, or its vicinity, placed two parcels of cotton in the possession of my son, Charles A. L. Lamar, and upon which some advances were made besides storage, commissions, cartage, etc. I have to-day recovered payment for the same from the U. S. Treasury, and the rightful owner is requested to come forward, pay the advances, the expenses of collection, prove his ownership, and receive the balance due.

"G. B. LAMAR."

XIII. That, seeing said advertisement, the proper officers of said company recognized it as notice to them that said Lamar had recovered the proceeds of a portion of the cotton belonging to their company as aforesaid; that they made known the rights of said company in the premises to said G. B. Lamar; that he thereupon admitted he had received from the United States and held in his possession the proceeds of said 136 bales of cotton, so as aforesaid placed in the hands of his son, Charles A. L. Lamar,
5 but pretended to doubt the right of said company to the same, and deferred payment therefor for better proof thereof; that pending correspondence between said company and himself thereon said G. B. Lamar departed this life; that thereafter the defendant, G. De Rossett Lamar, duly qualified as sole executor of the estate of said G. B. Lamar and entered upon the administration thereof; and that as such executor he came into possession of and still holds said $23,844.88, the proceeds of *of* said company's cotton as aforesaid.

XIV. That since the death of said G. B. Lamar said company has, by a proper and full assignment, transferred and delivered to your orator for value all and singular its right, title, and interest in and to said 136 bales of cotton, and the proceeds thereof, to wit: the said sum, $23,844.88, as recovered and received by said G. B. Lamar, and all and singular the right to sue for and recover the same.

XV. That the said G. De Rossett Lamar, the defendant herein named, as the executor of the said G. B. Lamar, deceased, has at all times evaded and refused, and still refuses to pay over said money to said company or your orator, while at the same time admitting his possession of the same, and pretends to require proofs that are or ought to be in his possession, as such executor, to wit: the books, papers, and accounts of the said Charles A. L. Lamar, which contain the evidence of the receipt of said cotton by said Charles A. L. Lamar, deceased, and which passed into the hands of defendant's testator and are in the possession, or subject to the control of the defendant as such executor, and not accessible to your orator.

XVI. Your orator, upon information and belief, states that the said defendant, who, as executor as aforesaid, is in possession of said $23,844.88 so due and belonging to your orator, is engaged in a hazardous and speculative business as a banker and broker in the stock market in the city of New York; that as such banker and broker he is liable to encounter the large losses and misfortunes incident to such hazardous investments; that for the reason stated your orator greatly fears that pending his efforts to recover the same, said money will be lost, and that a sum sufficient
6 to cover said $23,844.88, and interest and costs, should be paid

into the registry of this court, to be safely invested and held pending the event of this suit.

XVII. That said company at all times was, and since becoming the assignee of its title and estate therein your orator has at all times been, ready and willing to pay to said G. B. Lamar and this defendant all proper costs, charges, and advances upon said 136 bales of cotton as called for in the said advertisement of April 19th, 1874, and now and hereby tenders the same, but neither said G. B. Lamar nor the defendant has ever prepared or stated an account, though frequently thereunto requested, showing the amount of said charges and advances, and without being advised by the inspection of the books, papers, and accounts of the said Charles A. L. Lamar and said G. B. Lamar, now in the possession or under the control of the defendant, as aforesaid, your orator is not able to state what are the just and legal charges against said cotton, and for this reason, among others, is entitled to discovery from the defendant of the books, papers, and accounts aforesaid.

XVIII. That by reason of the premises the defendant, as such executor, is indebted to your orator, as assignee as aforesaid, in the sum of $23,844.88, with interest from the 19th day of April, 1874, less such sum for costs, charges, and advances as may be found, upon an accounting, to be justly and lawfully due as against said 136 bales of cotton.

XIX. That in order to protect and save harmless the defendant, personally and as executor as aforesaid, from any and all possible claim or liability of being required to account for or pay over to any other person or persons claiming or pretending to claim the said 136 bales of cotton or the proceeds thereof, other than as alleged and prayed in this bill, your orator now and hereby tenders and offers to execute or cause to be executed to the defendant a good and sufficient bond of indemnity and security against any and all such claim or demand in such sum and in such manner as to this honorable court may seem meet and proper.

Wherefore, the premises considered, and inasmuch as your orator is
7 without sufficient or adequate remedy at law, and can only be relieved in a court of equity where discovery can be had to supply the place of lost papers and missing proofs, and the trust created and declared in favor of your orator as assignee of said company:

Your orator prays that the United States writ of subpœna may issue out of and under the seal of this court requiring the defendant, G. De Rossett Lamar, to appear on a day named, and under a sufficient penalty named in said writ of subpœna, and upon his corporal oath, full, true, and complete teanswer and discovery make to all and singular the allegations of this bill.

Your orator further prays that said G. De Rossett Lamar may be enjoined and restrained from the further use and handling of said proceeds of said cotton so held in trust to the use of your orator as aforesaid; and that he be required to pay the same and accrued interest, amounting to , into this court to be safely invested, subject to the order of this court, in the event of this suit.

Your orator further prays that said defendant may be required to discover, produce, and exhibit in court, for the inspection of your orator, and to be read in evidence on the trial in this canse, all and singular the books, papers, and accounts of the said Charles A. L. Lamar, and the said Gazaway

B. Lamar, which contain the entries of, or in any manner appertain to the receipt of said cotton by said Charles A. L. Lamar, in 1864, the advances made thereon, and any and all costs and charges that may be claimed against said cotton or the proceeds thereof, so that your orator may be advised of all just and lawful charges which he may be required to pay for or on account of said cotton.

Your orator further prays that, upon the final hearing of this cause, he may have a decree against said G. De Rossett Lamar, as executor aforesaid, to pay the sum of $23,844.83, with interest from 19th day of April, 1874, less such sum as upon an accounting may be found due for costs, charges, and advances on said cotton, together with his costs and disbursements herein.

And your orator further prays for such other or further order or decree as may be just and equitable, and for all general and special relief, and as in duty bound, will ever pray.

J. K. HERBERT,
Solicitor for Complainant.

JOSEPH B. STEWART, *of Counsel.*

8 UNITED STATES OF AMERICA,
City of Altoona, Pa., State of Pennsylvania:

Charles F. McCay, being duly sworn, deposes and says that he is the complainant in the foregoing bill named; that he has read the same and knows the contents thereof, and that the same is true to his own knowledge, except as to matters and things therein stated on information and belief and as to those matters he believes it to be true.

CHARLES F. McCAY.

Subscribed and sworn to before me this 26th day August, 1879.
In witness whereof I hereunto set my hand and official seal.
[SEAL.] THOS. H. GREEVY,
City Recorder, Altona, Pa.

(Endorsed:) U. S. circuit ct. s. d. N. Y. Charles F. McCay vs. G De Rossett Lamar. Bill of complaint. J. K. Herbert, solicitor for complainant, 35 B'dway, N. Y. City. U. S. circuit court. Filed Aug. 29, 1879. John I. Davenport, clerk.

9 U. S. circuit court southern district of New York. In equity.

CHARLES F. McCAY
vs.
G. DE R. LAMAR. } No. 1285.

SIR: Please enter our appearance as solicitors for the defendant in the above-entitled cause. Dated N. Y., October 6th, 1879.

Yours, &c.,

DICKERSON & DICKERSON,
Solicitors for Defendant.

To the clerk U. S. circuit court, southern district of New York.

(Endorsed:) U. S. circuit court, southern district of New York. In

equity. C. F. McCay vs. G. De R. Lamar. Notice of appearance. Dickerson & Dickerson, defendant's solicitors, Staats-Zittung building, New York City. U. S. circuit court. Filed Oct. 3, 1879. John I. Davenport, clerk.

United States circuit court, southern district of New York.

CHARLES F. McCAY *against* G. DE ROSSET LAMAR. } In equity.

The answer of G. De Rosset Lamar, defendant.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, admitting that he is a citizen of the State of New York, residing in the city of New York, and the executor of the estate of the late Gazaway B. Lamar, deceased, for answering to said bill of complaint, saith:

1. He has no knowledge with reference to the allegations in the first paragraph of the bill of complaint herein in regard to the Richmond Importing & Exporting Company, and he therefore denies each and all of the same, and leaves the complainant to make such proof thereof as he may be advised.

2. He has no knowledge with reference to the allegations in the second paragraph of the bill of complaint herein, with reference to the agents and fiduciaries of the said company and their acts, and therefore, he denies each and all the allegations in the said second paragraph, and leaves the complainant to make such proof thereof as he may be advised.

3. That with reference to the allegations in the third paragraph of said bill of complaint, he has no knowledge with regard to the special lots of cotton therein referred to and the allegations therein made with reference thereto, and he therefore denies the same, and leaves the complainant to make such proof thereof as he may be advised. And he specially denies that, as is alleged in said bill of complaint, the said Gazaway B. Lamar administered upon the estate of said Charles A. L. Lamar, and in that capacity came into the possession of certain cotton or any part thereof, belonging to the said company in any way, as is alleged in said third paragraph of said bill of complaint.

4. That he has no knowledge with reference to the allegations made in the fourth paragraph of said bill of complaint, and he therefore denies the same, and leaves the complainant to make such proof thereof as he may be advised.

5. That in regard to the allegations in the fifth paragraph of said bill of complaint, he admits that said Gazaway B. Lamar brought suit for the recovery of the proceeds of certain cotton that had been owned by him and taken away from him in the United States Court of Claims, where said suit was docketed as No. 32–22 on the trial docket of said court, as will more fully appear by the proceedings therein of said court. But defend-

ant denies that claim was made in said suit for any cotton which was or ever had been the property of the complainant herein.

6. That he has no knowledge in regard to the allegations made in the sixth paragraph of the bill of complaint herein, and therefore denies the same, and leaves the complainant to make such proof thereof as he may be advised.

7. That in regard to the allegation in the seventh paragraph in said bill of complaint contained, the defendant has no knowledge, and therefore denies the same, and leaves the complainant to make such proof thereof as he may be advised. And he further especially avers that the said Gazaway B. Lamar did not, in said suit, in said Court of Claims, sue for and claim said 136 bales referred to in said seventh paragraph of the bill of complaint, or any other number of bales which he, the said Lamar, held in trust.

13 8. That with reference to the allegations in the eighth paragraph of said bill of complaint herein, the defendant admits that certain words therein quoted are quoted from certain papers presented in said Court of Claims in behalf of said Gazaway B. Lamar, but defendant denies that said quotations are or were in any way conclusive upon the said Gazaway B. Lamar or upon this defendant, and avers that they incorrectly set forth the facts in regard to the special lots of cotton therein referred to, as will more fully appear by reference to the record of all the proceedings in said suit, to which the defendant begs leave to refer.

9. This defendant admits, as is alleged in the ninth paragraph of said bill of complaint, that in due course of law, a judgment was rendered in said Court of Claims in favor of said Gazaway B. Lamar for the amount of $579,343.51, which amount was adjudged to be paid to said Lamar, but defendant has no knowledge as to the particular number of bales, or the particular value per bale, which was considered by the court in arriving at the said judgment, and he therefore denies the allegations with reference thereto as set forth in said ninth paragraph of the bill of complaint and leaves this complainant to make such proof thereof as he may be advised.

10. And defendant denies that there were included in said judgment so rendered by said Court of Claims the proceeds of the 136 bales of cotton particularly described in paragraphs VI and VIII of said bill of complaint, or of any smaller number of said bales of cotton, or for any amount or value thereof, and that no amount was allowed by said court on account of said cotton.

11. The defendant further admits that in the month of April, 1874, the whole of the said judgment was paid to said Gazaway B. Lamar, but he denies that the said Lamar then and there, or at any other time, received the sum of $23,844.88, or any other sum, in trust to the use and benefit of the said company, and the complainant herein, as is alleged in said eleventh paragraph of the bill of complaint herein, and he further denies

14 that said sum, or any part thereof, has ever since remained in the hands of said Gazaway B. Lamar or this defendant, in the like trust or in any other trust, as in said complaint stated.

12. The defendant admits that the said Gazaway B. Lamar published, on or about the 19th day of April, 1874, an advertisement in the Richmond Enquirer, a newspaper published in the city of Richmond, in the State of Virginia, and defendant denies that it was in the words, letters, and figures stated in the twelfth paragraph of said bill of complaint, and

leaves the complainant to make such proof thereof as he may be advised. And defendant has no knowledge in reference to the other allegations in said twelfth paragraph referred to, and therefore denies the same, and leaves the complainant to make such proof thereof as he may be advised.

13. The defendant admits that after the publication of said advertisement, certain correspondence took place between the said Gazaway B. Lamar and certain pretended officers of said company, but defendant denies that said Gazaway B. Lamar admitted that he had received from the United States and held in his possession the proceeds of said 136 bales of cotton claimed to have been placed in the hands of his son, Charles A. L. Lamar, but avers that he denied the right of said company to the same, and called upon them, if they could, to establish their legal claim thereto, which they altogether failed do, and that said G. B. Lamar afterwards departed this life, and that thereafter this defendant duly qualified as sole executor of the estate of said G. B. Lamar and entered upon the administration thereof; but this defendant denies that, as such executor, he came into the possession of and still holds said $23,844.88 or any other sum, as the proceeds of any cotton belonging to the said company, as set forth in said thirteenth paragraph of said bill of complaint.

14. And defendant denies that since the death of the said G. B. Lamar the said company has by a proper and full assignment, transferred and delivered to the complain't herein for value, all and singular its right, title, and interest in and to said 136 bales of cotton and the proceeds thereof, to wit, the said sum of $23,844.88, as claimed to have been recov-
15 ered and received by said G. B. Lamar, and all and singular the right to sue for and recover the same, as is alleged in the fourteenth paragraph of said bill of complaint. And defendant further alleges that the said company ceased to exist long before the death of the said Gazaway B. Lamar, and that no one since the death of the said Gazaway B. Lamar has had a legal right to make the assignment in question, or any other assignment in behalf of said company.

15. The defendant admits that he, as the executor of the said Gazaway B. Lamar, has at all times refused and still refuses to pay over any money to said company or to the complainant, but he denies that he has sought to evade any such payment, or that he has at the same time, or at any time, admitted his possession of such money, but he avers that he has demanded that the said company and the said complainant should produce proofs of their pretended ownership, which they have heretofore altogether failed to do, and he denies that any proofs of such ownership are or ought to be in his possession as such executor, as is alleged in the fifteenth paragraph of the said bill of complaint, to wit, the books, papers, and accounts of the said Charles A. L. Lamar; and defendant avers that no such books are in existence or were ever in his possession or in the possession of the said Gazaway B. Lamar, or in his control, or accessible to him since the death of the said Charles A. L. Lamar, but on the contrary he alleges that all the books of the said Charles A. L. Lamar, with reference to his cotton transactions, were destroyed before the year 1865, and during the war between the United States and the Confederacy.

16. And defendant further denies that he is engaged in any hazardous and speculative business as a banker and broker in the stock market in the city of New York, or that he is engaged in any business whatever, except

in that of attending to his duties as executor of the estate of the said G. B. Lamar, in which duties his time has been fully employed, and that there is no reason why the complainant should greatly fear that pending his efforts to recover herein any money belonging to the complainant alleged to be in the hands of the defendant will be lost; and defendant further avers that there is no reason why the sum sufficient to cover said $23,844.88, and interest and costs, or any other sum, should be paid into the registry of this court to be safely invested and held pending the event of this suit.

17. And defendant has no knowledge as to whether said company or the complainant has at all times been ready and willing to pay all proper costs, charges, and advances upon said 136 bales of cotton as is alleged in said bill of complaint, and therefore denies the same, but he admits that neither the said Gazaway B. Lamar nor the said defendant has ever prepared or stated an account showing the amount of said charges and advances, and that there are no books, papers, and accounts of the said Charles A. L. Lamar and the said G. B. Lamar now in his possession or under his control from which he is able to obtain any information in regard to the amount of the just and legal charges against said cotton, and therefore he avers, upon information and belief, that the amount of said just and legal charges were equal to the full value of said cotton, or of any sum that was obtained therefor in said suit by said Gazaway B. Lamar.

18. Defendant further denies that by reason of the premises set forth in said bill of complaint, or of any other premises, he as executor, or in any other way, is indebted to the complainant herein as assignee, as aforesaid, in the sum of $23,844.88, with interest from the 19th day of April, 1874, less any sum for costs, charges, and advances as may be found upon an accounting to be justly and lawfully due, as is alleged in the eighteenth paragraph of said complaint, and defendant further denies that he is indebted to the complainant in any sum whatever.

19. And the defendant, further answering, says he admits that said Gazaway B. Lamar did recover from the United States, in suit brought by him in the Court of Claims, $579,843.51 on account of certain cotton taken from him by the agents of the United States, but he avers that all said recovery was obtained on account of cotton belonging to him, the said Gazaway B. Lamar, and that it was obtained by reason of the fact that he, the said Gazaway B. Lamar, was a loyal citizen of the United States at the time the said cotton was taken away from his possession, and that in said suit the said Gazaway B. Lamar only made claim for cotton that belonged to him, and in said suit he could only lawfully have received, and did only receive, for cotton belonging to him.

20. And defendant, further answering, says that if in said suit the said Gazaway B. Lamar made any recovery on account of cotton which did not belong to him, but on which he had made some advances, and so had some property or ownership therein, yet, nevertheless, the said Gazaway A. Lamar in said suit could only lawfully have recovered, and only did recover, on account of said cotton the actual amount of his said property and advances and interest therein.

21. And defendant, further answering, says that neither the said Richmond Importing and Exporting Company nor the said Charles F. McCay had or could have had any property in any of the said cotton for

which the said Lamar recover judgment, by reason of which property either the said company or the said McCay could have obtained any recovery in said Court of Claims for said cotton so taken by the agents of the United States, for the reason that both the said company and the said McCay were enemies of the United States, and had no rights to the protection of the courts of the United States, and as such enemies their property at the time said cotton was taken by the agents of the United States could have been lawfully taken and captured by the agents of the United States.

22. And defendant, further answering, says, on information and belief, that said Richmond Importing and Exporting Company was a corporation specially organized by the laws of the State of Virginia, during the war of the late rebellion, for the purpose of exporting cotton from the Confederate States and of violating the blockade established by the United States, and in various ways, directly and indirectly, making war upon the United States, and that all the officers and stockholders of said corporation failed at all times during said war of the rebellion to bear true allegiance to the United States.

18 23. And defendant further alleges that said corporation was never lawfully in existence, and that any existence that it did have terminated in the year 1865, and that since that time it has never had any property, officers, or been in any condition to lawfully bring any suit, make any claim, give any release, or make any assignment.

24. And said defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in the said complaint demanded, and this defendant prays the same advantage of his aforesaid answer as if he had pleaded or demurred to the said bill of complaint, and this defendant prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DICKERSON AND DICKERSON,
Solicitors for Def't and of Counsel,
N. Y. Staats-Zeitung Building, City Hall Sq., N. Y. City.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

G. De Rosset Lamar, being duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

G. DE ROSSET LAMAR.

Subscribed and sworn to before me this 20th day of December, 1879.
[SEAL.] WM. S. BEAMAN,
Notary Public, City and County of New York.

(Endorsed:) U. S. circuit court. So. dist. of New York. In equity. Charles F. McCay vs. G. De Rosset Lamar. Answer. Dickerson & Dickerson, solicitors for def't, N. Y. Staats-Zeitung b'ld'g, Tryon Row, N. Y. New York circut court. Filed Dec. 22, 1879. John I. Davenport, clerk.

19 United States circuit court southern district of New York.

CHARLES F. McCAY
vs.
G. DE ROSSETT LAMAR. } No. 1285. In equity.

The replication of Charles F. McCay, complainant, to the answer of G. De Rossett Lamar, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever
20 in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in his said bill he hath already prayed.

Dated New York, Dec. 29th, 1879.

(S'g'd) J. K. HERBERT,
Sol. for Complainant.

JOS. B. STEWART,
of Counsel.

(Endorsed:) U. S. cir. court, s. d. N. Y. Charles F. McCay vs. G. De Rossett Lamar. Replication. J. K. Herbert, sol. for compl't, 35 B'dw'y, N. Y. City. U. S. circuit court. Fled Dec. 29, 1879. John I. Davenport, clerk.

21 Circuit court of the United States for the southern district of New York.

CHARLES F. McCAY
vs.
G. DE ROSSETT LAMAR. } In equity.

Testimony taken on the part of the complainant, under the 67th rule of the Supreme Court of the United States (as amended), to be used on the final hearing of this cause before the circuit court of the United States for the southern district of New York.

SATURDAY, *January* 3, 1880.

Present: Joseph B. Stewart, esq., counsel for complainant; Edward N. Dickerson, esq., counsel for defendant.

Adjourned to the 24th inst., at 11 a. m.

SATURDAY, *January* 24, 1880.

Present, counsel as before.

G. De Rossett Lamar, in obedience to the subpœna duces tecum, appears and produces three entries in the journal and ledger of the deceased

22 testator, at page 166 of the journal, and 15 and 43 of the ledger, which entries are in the following words, that is to say:

The journal entry is:

"The United States to suspense account for E T A and X Y Z, 136 bales upland cotton, taken from the press warehouse in 1865, of which the owner is unknown, and is advertised for in Richmond, Va., @ $175.33, $23,844.88."

The entry is posted in the ledger, at page 15 on the credit side of suspense account, in these words:

"1874, Apl. 30, United States, 166, $23,844,88."

Also, at page 43, in the account entitled "The United States'," in these words:

"April 17, to sundries, 166, $23,844.88."

The defendant states that these are the only entries in any books of account of the deceased relative to cotton marked E T A, and X Y Z, and that he has no books or papers of Charles A. Lamar, of any kind, and never has had any, and that he is informed and believes that the books and papers of Charles A. Lamar were destroyed in Savannah by the soldiery of the United States.

G. De Rosset Lamar, being duly sworn, deposes and says:

Q. 1. Please state your name, age, residence and occupation,

A. My name is G. De Rosset Lamar; my age is thirty-eight years; reside in New York, and am engaged in managing my father's estate.

Q. 2. Where did you reside between the years 1861 and 1865?

A. I was in the Southern States; most of the time in Virginia.

Q. 3. In what manner were you engaged?

A. I was an officer in the Confederate States Army.

Q. 4. Are you acting as sole executor of the estate of Gazaway B. Lamar?

A. I am.

23 Q. 5. Under the subpœna duces tecum you have produced books concerning certain entries as to the 136 bales of cotton marked E T A and X Y Z; who made those entries?

A. I believe they were made by my father, G. B. Lamar.

34 Q. 6. Beside those entries, I understand you to say you never have seen any entries whatever of said cotton in any other books; is that so?

A. I never have, to the best of my recollection.

Q. 7. I also understand you to say that you never have seen and have no knowledge of the books of C. A. L. Lamar, deceased, in reference to any cotton transactions, and especially in reference to the two lots of cotton, E T A and X Y Z, involved in this suit; is that so?

A. It is so.

Q. 8. You have stated that you are informed and believe that the books of C. A. L. Lamar had been destroyed; please state from what source you derived such information, and when.

A. Well, I derived it in the first place from certain memoranda contained in my father's general correspondence and books; I think so; also from the fact that it was the general rumor that reached me shortly after the occupation of Savannah by the Federal forces.

Q. 9. Besides what is contained in the entries in reference to said cotton, which was made part of your examination, have you or have you not any personal knowledge whatsoever about the said 136 bales of cotton, or the use or disposition which was made thereof?

A. I don't know anything of my personal knowledge; nothing more than what is contained in the books.

Q. 10. Please look at the letter now shown you, dated Savannah, 24 Sept., 1865, addressed to Messrs. Harrison, Godden & Apperson, Richmond, Gents., and signed "G. B. Lamar," a copy of which is made part of this question (marked L. No. 1), and state in whose handwriting said letter is, to the best of your knowledge and belief.

A. To the best of my belief it is in the handwriting of my father.

Q. 11. Have you or not any personal acquaintance with Messrs. Harrison, Gadden & Apperson, and have they or not, or either of them, previous to the bringing of this suit, alleged ownership for themselves and associates to the 136 bales of cotton involved in this litigation?

24

A. I have no personal acquaintance with either; I have been written to on the subject of this cotton by a certain Mr. Apperson, of Richmond, Va.

Q. 12. Did or did not your father recover a judgment against the Government of the United States for cotton alleged to have been taken out of his possession in the early part of the year 1865?

A. He did.

Q. 13. What, to the best of your recollection, was the amount of the judgment so recovered, and was the same paid?

A. The award of the Court of Claims was for the sum of $579,000, and I presume that sum was paid.

Q. 14. Please look at the paper now shown you, headed United States Court Claims, G. B. Lamar vs. The United States, No. 3222," headed "additional brief by claimant," and signed "G. B. Lamar, claimant," and certified by the clerk of the Court of Claims to be a true copy, which is made part of this question, and especially on page 8, and numbered 26, and state whether it is not, to the best of your knowledge and belief, all included in the cotton your father sued for, and for which said recovery of $579,000 or thereabouts was had.

A. I don't know whether it is or not; I don't believe it was recovered; I mean that I don't know anything about this Exhibit No. 2, and I do not believe that the cotton referred to on page 8, No. 26, was included in the recovery of the judgment in the Court of Claims.

Q. 15. Do you know of your personal knowledge what cotton was included in the said recovery by your father in the Court of Claims? And if yea, please state the exact cotton so recovered, and the source of your information.

A. I have no personal knowledge, except so far as when investigating the matter of these 136 bales, E T A and X Y Z, I have not been able to trace them as included in the award by the Court of Claims; in fact, I have always failed to do so.

Q. 16. You have stated that you are acting as the sole executor of your father's will; you will now please look at the paper shown you, made part of this question, marked L No. 3, purporting to be a certified copy of

said will, and especially item 7 thereof, and state whether or not
25 the various lots of cotton embraced in said item 7 were or were not included in the cotton sued for by your father, and upon which said judgment of $579,000 or thereabouts was based.

A. I have no personal knowledge of the matter.

Q. 17. As executor of your father had you not read the will?

A. I have.

Q. 18. To the best of your knowledge and belief, is not the paper Exhibit L No. 3, a copy of said will?

A. If the certification is correct, I presume it is; I have had no opportunity of comparing it.

Q. 19. Please look at the paper now shown you, made part of this question, marked "L No. 4," and especially at the printed portion thereof, headed "Information wanted," and signed "G. B. Lamar, No. 46 West Twenty-first street, New York," and state what knowledge, if any, you have of said printed paper, and whether the same was printed or caused to be printed by your father, and the object thereof.

A. I know nothing about it personally; I have received a copy of the advertisement and the affidavit of Mr. Apperson, which, I presume, is a fac simile of the one now presented.

Q. 20. Please look at the paper now shown you, addressed, "No. 46 West Twenty-first street, New York, June 2, 1874, to J. L. Apperson, Dear sir," signed "G. B. Lamar," a copy of which is made part of this question, marked "L No. 5," and state in whose handwriting the same is.

A. I believe it to be in my father's—G. B. Lamar.

Q. 21. Please look at the paper now shown you, dated "New York, April 27, 1874," addressed "J. S. Apperson, esq., Dear sir," and signed "G. B. Lamar," a copy of which I make part of this question, marked "L No. 6," and state in whose handwriting the same is, to the best of your knowledge and belief.

A. I believe it to be my father's handwriting.

Q. 22. Please look at the paper now shown you, a copy of which is made part of this question, marked "L No. 7," dated "78 Broadway, New York, May 14, 1875," addressed "C. M. McCoy, esq., Baltimore, Md., Dear sir," and signed "G. De Lamar," and state in whose handwriting the same is.

A. The letter, excepting the underscoring, is in my handwriting.

26 Q. 23. Was there or was there not any other 136 bales of cotton marked "E T A" and "X Y Z," and in reference to which your father advertised for the owners, except that referred to in your correspondence with Mr. McCoy or that referred to and so described in the letter of your father of September 24, 1865, addressed to Messrs. Harrison, Goddin & Apperson, made part of your examination; and, if you say there was, please state what cotton it was.

A. I don't know anything personally of the facts.

Q. 24. The letter of your father of the 24th September, 1865, refers to advances and charges which he desired Mr. Hambleton to pay on account of said cotton. Have you said bill of charges in your possession, and, if yea, will you produce the same as part of your examination?

A. I seem to have some recollection of a bill or a memorandum of that kind, or a copy of such bill or memorandum, or letters of my father ad-

dressed to Mr. Simeon Draper, then the United States cotton agent here, demanding payment for compressing cotton; but I do not recollect whether it was an itemized bill or a bill in gross for a large amount of cotton stored at the press warehouse. I will look for the paper, and, if I can find it, I will produce it.

Q. 25. Did your father in his life-time, or you as his executor since his decease, prepare or present any account to said Hambleton for or on account of said 136 bales of cotton; and, if yea, have you a copy thereof; and, if so, will you produce a copy of the same as a part of your examination?

A. I have no knowledge of what my father may have done; I have not made out any such account, nor have I one, nor a copy.

Q. 26. Are you familiar with the manner and detail of receiving cotton at cotton-presses at Savannah; and in what manner the same is registered in any book or register kept for that purpose, if any. And, if yea, please state, to the best of your knowledge, what that method is.

A. I have no such knowledge.

Q. 27. It was customary, was it not, to keep books for that purpose?

A. As it is customary to keep books in business of other kinds, I take it for granted that books of registry and accounts must be kept in the pressing business.

27 Q. 28. But you state that the books kept for that purpose by C. L. Lamar, if any, were destroyed, so that you never have been able to see or inspect the same, or derive any information therefrom in reference to the charges against the 136 bales of cotton; is that so?

A. I never have seen the books; I know nothing of Charles A. L. Lamar's books, further than I have stated in answer to previous question.

G. DE ROSSET LAMAR.

Subscribed and sworn to before me, this 24th January, 1880.

R. E. STILLWELL,
Examiner.

28 EXHIBIT L No. 1.

SAVANNAH, *Sep.* 24, 1865.

Messrs. HARRISON, GODDIN & APPERSON, *Richmond:*

GENTLEMEN: Mr. Terrell showed me your letter enquiring about some cotton held by my late son Charles for Mr. Hambleton, agent, &c.

It was marked X Y Z and E T A; the exact number of bales I do not know, but it was taken and shipped to New York by the military of the United States in January last. From reports I heard recently I am led to believe that some persons are combined to represent that it is theirs; and from the names mentioned, in connection with it, I think they may succeed in their claim, however unjust and unfounded. I am of opinion that there will be no legal bar to the recovery of this cotton. The President himself told me it would all be paid for, and one of the assistants of the Treasury recently told me that they had released the cotton of the Chicora Company of Charleston, and, taking that as an indication, there would seem to be no doubt as to the course of that Department.

There will be a bill for storage and compressing that cotton, which Mr. Hambleton will please provide for; the latter item I am trying to get from

the United States agent who took the cotton. He admitted in a degree the claim, but objected to the rate of charge. I desired him to fix the rate, and he then repudiated the claim and signed his objection on the bill, and soon after they seized all my papers, and that bill among them, and it is only within the past week that I received them again. I sent that on to New York to Mr. Draper for settlement, and when I hear from him I will write again. Please show this to Mr. Hambleton, and say to him that I will give him the name of the official who is trying to get his cotton when I can get a more reliable evidence of the fact.

Yours, respectfully,

G. B. LAMAR.

29 EXTRACT FROM EXHIBIT L No. 2.

No. 26. 136 bales uplands (E T A or E T Y, 69, X Y Z, 67) received and advanced upon by C. A. L. Lamar for a person in Virginia, and were rebagged and compressed for the owner, The owner made inquiry for them since the war, but when informed of their being taken by the United States declined to pay the advances made upon them. 136 uplands. 3,266 bales, of which 199 are Sea Islands.

3,138 bales.

136. No. 26. This parcel of 136 bales was received and the freight paid by Charles A. L. Lamar, who advanced money upon them; they were taken from the press warehouses and from my possession, and constituted a part of the 3,553 bales.

EXHIBIT L No. 3.

STATE OF NEW YORK:

In the name of God, amen.

I, Gazaway B. Lamar, senior, of the county and State aforesaid, being of sound, disposing mind, memory, and discretion, do make, publish, and declare this my last will and testament, hereby revoking all other wills, testaments, and codicils by me at any previous time made.

ITEM 1.—I direct that all my just debts shall be immediately paid by my executors herein named.

ITEM 2.—I hereby direct that all the rest of my property of which I may die seized or possessed, or which I may hereafter acquire,
30 excepting only my cotton claims upon the Government of the United States, shall be, as soon as practicable, divided into four equal parts.

ITEM 3.—That one of said equal parts be then conveyed to my son G. De Rosset Lamar in fee-simple, or to such person or persons as he shall or may select, by notice to my executors in writing at the time, as trustees, to hold said part, or any portion of the same, in trust for him and his children, on such terms and conditions as he may prescribe.

ITEM 4.—That another of said equal parts be conveyed to Timothy G. Porter, of New York, in trust, for the separate use of my daughter Charlotte A. Soutter, wife of Robert Soutter, and of her children now in life or born hereafter, share and share alike, as tenants in common and not as joint tenants, the child of any deceased child to represent and stand in the

place of his or her or their deceased parent, and to take in all cases per stirpes and not per capita, and the shares of my said daughter Charlotte, and of her female child or children, to be free from the debts, contracts, obligations, and control of any present or future husband. It is my further will that said trustee shall pay the income of such equal part and share of my estate to my daughter Charlotte during the minority of her said children, quarterly and upon her own receipt, and that as soon as any child shall attain the age of twenty-one years, or shall marry, the portion of such child shall be set apart and conveyed to his or her trustee or trustees, to be selected by my said daughter Charlotte, to be held in trust on such terms and conditions as she may prescribe for the benefit of such child.

ITEM 5.—That another of said equal parts be conveyed to Henry F. Durant, esq., of Boston, in Massachusetts, in trust, for the children of my late daughter Anne C. Minor, named Hattie C. Minor, and Benjamin Lamar Minor, for their separate use, free from the control of all other persons, and should either of them die childless, the share or portion of such child shall go at once and vest in the survivor, and if both should die childless, or die leaving no child, or the representative of any child
31 living at the time of his or her death, the shares and proportion of such children, or the survivor of them, shall be divided equally amongst my other children herein named who may be living at the time and the children of any one of them that may be deceased, to take per stirpes and not per capita, and upon the uses, trusts, and limitations set forth in this my will.

ITEM 6.—That another equal portion be conveyed to Henry F. Durant, esq., in trust for the separate use of my daughter, Harriet Cazenove Lamar, at present a minor, the net income and proceeds thereof to be paid to her quarterly, or be invested in whole or in part, at her option, for her benefit; and that my said daughter shall have full power and authority to bequeath and dispose of said part by her will and testament in writing, either before or after coverture, and should she fail to do so and depart this life childless, then that part or portion shall be equally divided amongst all my children herein named who may be living at the time, share and share alike, to take per stirpes and not per capita, and upon the trusts and limitations set forth in this will.

ITEM 7.—It is my further will and desire, and I hereby direct my executors, to press my claims upon the Government of the United States for payment of the following cotton, which are now before the Court of Claims, and also before the Committee on Claims of the Congress of the United States:

G. B. L. & M. A. R. or G. B. L. — 32 bales Sea Island, belonging to the estate of my son C. A. L. Lamar.

Lamar &c. — 136 bales upland, bought by C. A. L. Lamar of F. S. Gue, and paid for by him at 16c. per lb. for equally joint account with me.

S. M., 94 } J. McM., 6 } — 100 bales upland H. by Meinhard & Bro., and paid for by me at $1.25 per lb. in currency, making in all 348 bales for that account.

J. J. W., 402. W. T., 44. — 446 bales upland, bought by W. W. Cheever of J. J. Williams and W. A. Taylor for joint account between him and me, and paid for by me.

32 R. 3; W. Howard, 7.
T. B., 13, R. Bracewolt, 37.

60 bales, bought by E. Remington & Sons for me.

W. R. 1. A. H. 1.
W. 1. W. H. 1.
W. F. G., 5.

9 bales my own cotton.

Also:

G. C. 82 9
D & E 28, G A C 20, J L K 22, J R H 6.

91 Sea Island } bought by W. W. Cheever and paid for by
76 " " } me for the equally joint account of W. W.
13 " " } Cheever and C. A. L. Lamar.

W.
CC 71
WT 25
AH 34
JK 165
R 235
JJD 7
WG 15
L 622
GAC 400
BC 141

1715 bales upland, bought of W. W. Cheever, and paid for by me for joint account of W. W. Cheever and C. A. L. Lamar and myself.

Various. 484 bales upland, bought by W. W. Cheever, paid for by me and taken from Thomasville by A. C. Brown, jr., per his receipt in the Treasury Department.

Various. 426 bales upland, bought by W. W. Cheever and paid for by me, taken from Florida by S. G. Cabell, which belonged to the same account.

P M JH or JG 256 19

275 bales cotton, on which C. A. L. Lamar and myself *are* claims for advances made.

ETA or ETY 67
XYZ 67

136 bales cotton belonging to a gentleman in Richmond, Virginia, on which C. A. Lamar made advances.

And also for 1,018 bales cotton belonging to the Importing & Exporting Company, of which I am president, which were taken by A. G. Brown, jr., Treasury agent, from Thomasville, in November, 1865, by his receipt in the Treasury Department, and for about 400 bales taken from Macon in November, 1865, by Treasury agents named Dillon and Alexander, of which L. M. Whittle, esq., of Macon, can procure the testimony.

And also for 688 bales upland cotton belonging to the same company, which were taken from Savannah by Colonel Ransom, on which Henry Lafore, esq., of Liverpool, has a lien for about thirty thousand pounds sterling, which he is pressing for payment under the treaty of Washington. When paid ought *ought* to leave a large balance for the company.

And when all are collected the amount is to be divided to the stockholders of said company on their several certificates, about 1,860 in number.

When all the collection for this private cotton are made, and
33 the amount placed to the credit of the several accounts, and interest charged to each account for my advances, then a division must be made of the net balance to the private account of each.

And the account of C. A. L. Lamar and W. W. Cheever be, respectively, charged with each one-third of the losses on the guano accounts, with interest thereon; and if any balance be due by W. W. Cheever's account, the account of C. A. L. Lamar must be charged with one-half of that amount, as a partner in that business.

And if there be any balance due on W. W. Cheever's account, after charging him with W 91 bales cotton, stolen by his executor, Geo. H. Cheever, from Mr. Groover's warehouse (unless the same be collected from

the United States, as cotton taken by S. G. Cabell) the same to be paid to P. M. Nightingale, esq., for W. W. Cheever's indebtedness to him to the extent of the same, if it can be legally done.

ITEM 8.—And to settle all accounts with C. A. L. Lamar's estate, including the loss on the joint guano account, and to pay or to receive the balance.

ITEM 9.—That inasmuch as my nephew G. B. Lamar, jr., was persecuted and imprisoned by the United States Treasury agents whilst they were stealing the cotton of the Importing & Exporting Company, at Thomasville, in November, 1865, my executors be directed to pay him for the same, and his services rendered then and since, five per cent. of whatever may be collected from the Government on that account, if he be living, and if not to his widow, and if she shall be departed, then to his next of kin, and that he be discharged and exonerated from any debt he may owe me to the extent of five thousand dollars, or if he owe me nothing, or less than that amount, that he shall be paid enough, with whatever amount he may owe me, to make that amount, and that the same shall be settled upon his wife, by trustees chosen by her, with reversion to him, if she dies childless.

34 ITEM 10.—That the amounts collected on my accounts from said cotton claims shall be divided into four equal parts, if it be less than two hundred thousand dollars, and be distributed to my four children, as per items three, four, five, and six of this my will, and upon the uses, trusts, and limitations specified in the same; and it is my will and desire that the trustee or trustees of my said daughters, and their legal successors, in said trusts, shall cause the portions coming to any and all granddaughters of mine, under the provisions of this will, before or hereafter expressed, to be secured to the sole and separate use, benefit, and behoof of each of said granddaughters, upon the marriage of them, severally, so that such portions shall not be or become in any manner subject to the debts, contracts, obligations, or control of any husband.

ITEM 11.—I give and bequeath next out of the residue of my cotton claims, when collected, one hundred thousand dollars, if so much remain, and if not, then whatever balance may remain, to be divided equally between the mayor and aldermen of the city of Augusta and the Oglethorpe Association of Infirmary at Savannah, of which Mrs. John Stoddard is now president, and Dr. Wm. Duncan is secretary, to be devoted to establishing and sustaining one or more hospitals for colored persons in each of said cities who have been slaves, and their descendants, giving preference to those which once belonged to or were hired by me, more especially to provide for the old, the decrepid, the blind, the deaf and dumb, the insane and for care of the lying-in of females for a period not exceeding six weeks on each occasion. But if the city of Augusta do not establish at least one hospital within two years after this bequest is due and payable, then and in that event the whole sum shall be for the benefit of the institution already referred to in the city of Savannah.

ITEM 12.—I give and bequeath to my sister Sarah Rees' daughters, Micon and Lamartine, three thousand dollars each, to be paid next out of my cotton claims.

35 ITEM 13.—I give and bequeath to Belle Lamar, daughter of my brother Basil Lamar, deceased, three thousand dollars, to be paid next out of my cotton claim.

ITEM 14.—I give and bequeath to my sister Rebecca McLeod five thousand dollars, to be paid next out of my cotton claims.

ITEM 15.—All the balance of my cotton claims and all the residue of my property, real, personal, or mixed, I devise and bequeath to my four children herein named, subject to the trusts and limitations set forth in items three, four, five, and six of this my will.

ITEM 16.—I nominate, constitute, and appoint my son, G. De Rosset Lamar, and my son-in-law, Robert Soutter, and my friend, Timothy G. Porter, my executors, to execute the duties herein required and devolved upon them.

In witness whereof I have hereunto set my hand and seal this 28th day of September, 1872, in the city of New York.

GAZAWAY B. LAMAR. [L. S.]

Signed, sealed, published, and declared by the above Gazaway B. Lamar as and for his last will and testament, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have duly attested the same and subscribed our names as witnesses:

DAVID B. GILBERT.
ALFRED W. BLOW.
JOSEPH DE W. DIMOCK.
JOHN STEVENS.

SEPTEMBER 28TH, 1872.

36 STATE AND COUNTY OF NEW YORK,
City of New York, ss:

I, Peter V. Burtsell, clerk to the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the last will and testament of Gazaway B. Lamar, deceased, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of said original record.

In testimony whereof I have hereunto set my hand and affixed the seal of office of said surrogate this 3d day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

[L. S.] PETER V. BURTSELL,
Clerk to the Surrogate's Court.

37 EXHIBIT L, No. 4.

Information wanted.

Some time in the year 1864 some persons in Richmond, or its vicinity, placed two parcels of cotton in the possession of my son, Charles A. L. Lamar, of Savannah, Georgia, deceased, which were stored in Lamar's warehouse, and upon which some advances were made, besides the storage, compressing, cartage, etc.

The cotton was forcibly and fraudulently taken by the military of the United States nine years ago, and converted without any legal process by libel or otherwise. I have to-day received payment for the same from the United States Treasury (without any interest), and the rightful owner is

requested to come forward, pay the advances, the expenses of the collection, prove his ownership, and receive the balance due.

G. B. LAMAR,
No. 46 West 21st Street, New York.

Ap. 19–deod 4t, sw and w, 1t.

STATE OF VIRGINIA,
County of Richmond, to wit:

Personally appeared before me, E. M. Garnett, commissioner of deeds for the State of New York, James L. Apperson, to me well known, and made oath that on or about the 21st day of April, 1874, he cut from the Richmond Enquirer the foregoing advertisement, and that on the 25th day of April, 1874, he wrote to G. B. Lamar, at No. 46 West 21st street, New York, in regard to said advertisement, on which there was a continuous correspondence for some time thereafter.

That he has endeavored to obtain a paper with said advertisement in it, but so far has been unable to do so, in consequence of the fact that several years ago the publication of the Enquirer ceased, and its files were sold, scattered, or otherwise disposed of, with all its other effects.

J. L. APPERSON.

Sworn and subscribed before me this 1st day of January, A. D. 1880.
[L. S.] E. M. GARNETT,
A Commissioner for the State of New York, residing in the City of Richmond, County of Henrico, and State of Virginia.

38 EXHIBIT L, No. 5.

No. 46 WEST 21ST STREET,
New York, June 2d, 1874.

J. L. APPERSON, Esq.:

DEAR SIR: I have y'rs 28th inst., with the copy of my letter to your firm of 24th Sept., 1865, which has some direct reference to the case. Why is it that your Mr. Hambleton residing in Baltimore, so near to you, cannot be heard from? Of course you will see that if the cotton in question belonged to your firm, that the other parties must be consulted also.

It is desirable that whatever is done should be done promptly, as I am only stakeholder, and must account soon to the executrix of my son's estate.

Resp'y, &c.,

G. B. LAMAR.

EXHIBIT L, No. 6.

NEW YORK, *Ap'l* 27, 1874.

J. L. APPERSON, Esq.,

D'R SIR: I have y'rs 25th inst. in regard to the cotton I advertised for, and I shall be very glad if you can prove it to be yours.

But you will excuse me for saying that the proof must be explicit and ample, as I am acting for my son's estate, with four daughters and an executrix to satisfy as well as for myself. You can refer also to the advances made upon it by my son.

Resp'y, &c.,

G. B. LAMAR.

39 EXHIBIT L No. 7.

BANKING HOUSE OF SOUTTER & CO.,
No. 78 Broadway, New York, May 14, 1875.

C. F. MCCAY, Esq., *Baltimore, Md.:*

DEAR SIR: By way of reply to yours of the 4th inst., permit me to state the following facts: Various causes, chiefly the exhaustion of his ready means, and the arbitrary conditions under which suit was then brought and subsequently ruled upon in the Court of Claims, led my father to abandon, for the time, all collateral interests, and to appear in that court as the claimant of his Savannah cotton alone.

In order, however, to recover that greater bulk of his fortune which was invested in cotton, seized at other points, and thus also perpetuate, by the only means in his power, the lapsing title of the Imp'g & Ex'pt'g Company to its cotton, he brought suit in his own name, and as president of the company, in the district court here and in Boston, against the Secretary of the Treasury and certain Treasury agents against whom he had positive evidence.

The Boston trial resulted in a partizan judge instructing the verdict of the jury, and in an appeal to the U. S. Supreme Court, where the case will await, for least a year to come, its order on an overcrowded docket; tho' with such a court this delay is regarded as extremely favorable. The New York case, with the unfavorable Mass. decision overhanging it, awaits the fate of the appealed case, and therein the estate is sufficiently hopeful of success to have provided the very ablest counsel, and will continue to spare neither effort or expense to make good its own claim, and by so doing that of the company in which it is so largely interested. But, as the company has no suit properly its own, and this explanation involved some disclosure of the conduct of the estate's private affairs in a matter of grave importance, I trust you will oblige me by confining this communication to those who alone should be interested—the stockholders of the company.

As to the other subjects mentioned in your letter, I know nothing of it, unless it is connected with a claim represented by a Mr. Apperson,
40 of Richmond, Va., and of that I know only that my father advertised for the owner of 126 bales cotton which had been stored and advanced upon by my brother C. A. L. Lamar, I think, and Mr. Apperson replied to the newspaper notice. Since my father's death he wrote to open a correspondence with me, but, after volunteering to give his communications every consideration due a statement of fact, he has written no more.

Hoping these explanations may prove satisfactory, and availing myself of this opportunity of renewing pleasant remembrances of your family and yourself, I remain, with great regards,

Very respectfully, yo's,

G. DE R. LAMAR.

United States circuit court, southern district of New York.

CHARLES F. McCAY
vs.
G. DE ROSSETT LAMAR.

AT OFFICE OF R. E. STILLWELL,
247 *Broadway, New York City, Nov.* 16, 1880—11 *a. m.*

Parties appeared, pursuant to notice, by counsel as before.

By consent of both parties, examination adjourned to Saturday, November 27th, at 11 a. m.

NEW YORK, *Nov.* 27, 1880.

At office of R. E. Stillwell, esq., 247 Broadway, New York City. Present, counsel as before.

CHARLES F. McCAY, the plaintiff, being produced and sworn, testified as follows:

Q. 1. Mr. McCay, please state your name, age, residence, and occupation.

A. My name is Charles F. McCay; my age, 70 years; Baltimore, Md.; my present occupation is insurance actuary.

Q. 2. Are you or not the plaintiff in this action?

A. I am.

Q. 3. Do you or do you not know of a corporation styled "The Richmond Importing & Exporting Company?"

A. I do.

Q. 4. Where was and is the habitat or place of business of said company since you have known it?

(Objected to as incompetent.)

A. I have corresponded with the officers of the company since 1861 until recently, at Richmond, Virginia.

Q. 5. Did you or did you not at any time, and if so, when, purchase any cotton for said company?

A. In the year 1861 and '62 I bought for them about 25 or 26 hundred bales of cotton at Augusta, Georgia; the cotton was part of it in Augusta and part in South Carolina, Alabama, and Georgia.

Q. 6. Did you or did you not, at and during that time, know a person named T. Edward Hambleton; that is, between the years 1861 and 1865?

A. Yes.

Q. 7. Please state when, in what connection, and under what circumstances you made the acquaintance of said Hambleton.

A. In 1864 he presented me a letter of introduction from S. J. Harrison, the president of said Richmond Importing & Exporting Company, and with it, that is, with the letter, an order from said president to deliver to Mr. Hambleton any of the cotton I held for the company, as Mr. Hambleton might request.

Q. 8. Pursuant to said order, did you or did you not deliver or order to be delivered to said Hambleton as such agent, any portion of said 25 or 26 hundred bales of cotton you had so purchased for said company, and

if yea, please state, to the best of your recollection, about what number of bales you did so deliver?

A. At various times in 1864 Mr. Hambleton wrote to me directing me to deliver certain portions of said cotton to his order at
42 Savannah, Georgia, by sending it to the railroad depot at Augusta, marked to him at Savannah. He not being there all the while, the letters came from various places. In all I sent to Savannah about sixteen hundred bales, retaining the rest till the end of the war.

Q. 9. Have you the letters addressed to you by said Hambleton, calling for said cotton to be shipped to him at Savannah, now present in your possession, and, if yea, will you please produce the same as part of your examination?

A. I have not the letters.

Q. 10. In shipping said cotton to said Hambleton at Savannah, did you or not take a note of the marks of the same, and, if yea, please state, to the best of your recollection, what said marks were?

A. I shipped the cotton always by the marks, and I took a note of them on my books, and wrote to Mr. Hambleton the marks of the cotton, and what those marks were. I now know nothing of the marks.

Q. 11. What relation, if any, had you to the said Importing & Exporting Company?

A. I was their agent in the purchase of this cotton, and in the delivery of a part of it to Mr. Hambleton, and delivering the rest afterwards to their order, and in holding it until so delivered.

Q. 12. Who, if any one, within your knowledge or information, received and handled said cotton for said company, or said Hambleton, in the city of Savannah; by handling I mean receiving, compressing, and preparing the same for market, and if you answer from information, please give the source of your information?

A. I cannot now recollect whether I then knew or did not know any consignee of the cotton in Savannah but Mr. Hambleton, although he wrote to me from various places to send this cotton to Savannah; but I subsequently learned from Mr. Apperson, the secretary of the company, and also from S. J. Harrison, the president of the company, and also from Mr. Hambleton, that the cotton was delivered to C. A. L. Lamar, of Lamar's warehouse, in Savannah.

Q. 13. Within your knowledge or information as such agent, did or did not said C. A. L. Lamar render and produce any account *to* said
43 cotton or any portion thereof, and if yea, will you please state when and how you derived your information?

(Objected to as incompetent.)

A. About 1874 Mr. Apperson wrote to me in Baltimore, asking if I knew the marks and amount of this cotton sent to Savannah. I replied that I did not. He wrote me again, asking me to call on Mr. Hambleton and get that information. I did so; and Mr. Hambleton showed me a paper professing to be an account between C. A. L. Lamar and Mr. Hambleton, agent.

(Counsel for defendant gives notice of motion to strike out so much of the foregoing answer which tends to prove the contents of letters not produced.)

Q. 14. Have you the letters written to you by Mr. Apperson to which

you have referred; and, if yea, will you produce the same as part of your deposition?

A. I do not know whether I have them or not; I have not them here with me, at any rate.

Q. 15. Will you please look among your papers for such letters, and if you find them will you produce them and file them as part of your deposition, with your name endorsed thereon in identification?

A. I will.

Q. 16. In what manner was said cotton bought and paid for; that is, in what kind of means or currency?

(Objected to as incompetent.)

A. The cotton was bought always by its marks, generally by a receipt of the warehouseman of the bales bought, with its marks and sometimes a receipt of some person in the country who held the cotton by its marks. The cotton was all paid for in confederate money, the currency of the State of Georgia at that time.

Q. 17. Please look at the paper made part of this question marked "C. F. M. No. 1," now shown you, and state whether the same is or is not one of the accounts in relation to said cotton or any portion of it as be-
44 tween said C. A. L. Lamar and said company, of which you have spoken, as being exhibited to you by said Hambleton.

A. I believe this is one of the papers, but I did not remember that it was an account against the Importing & Exporting Company; looking over the paper I recognize the items, and this is how I recognize the paper.

(Account offered in evidence; objected to, not having been shown the witness received this paper from Mr. Hambleton, that he had ever before seen it, and that it was received from either of the parties to said account, or from whom it was received, or that the witness has any knowledge as to it.)

Q. 18. You have stated that confederate money was used in the purchasing and handling of said cotton; I will now ask you whether you know, and, if yea, will you state what was the value of confederate money in the State of Georgia on or about the 1st day of November, 1864, when reduced to a specie standard?

(Objected to as incompetent.)

A. I bought and sold gold with confederate money about that time, and know that its value was about twenty-five dollars of confederate money for one of gold; but the legal value was fixed in Georgia by many decisions of the courts for different periods during the war between the States according to a scale published by a broker in Augusta, Georgia, named Barber, which scale is printed in the Georgia supreme court reports, and of which I have a copy.

Q. 19. Will you please produce the copy of said scale of prices of confederate money as part of your examination?

A. I will.

(Produced and marked "C. F. M. No. 2."

Paper offered in evidence objected to as incompetent.)

Q. 20. Will you please look again at the account of said C. A. L. Lamar with said company, Exhibit C. F. M. No. 1, and state what was
45 the value of twenty thousand six hundred and eighty-eight dollars of confederate money in the State of Georgia on or about the 1st day of November, 1864?

(Objected to as incompetent.)

A. It was $827 in gold by the value according to my recollection; the value by the legal scale is $780.

Q. 21. Are you or not the assignee of the said Importing & Exporting Company for the whole of this 136 bales of cotton marked "E. T. A.," and and "X. Y. Z.," involved in this suit, and, if yea, will you please produce said assignment as part of your answer?

(Objected to for form.)

A. I am the assignee, and delivered the assignment to Messrs. Stewart & Herbert, and make the same part of my answer.

(The counsel for complainant states that the witness did deliver the said assignment to him in his office previous to the commencement of this suit, where the same now is; but, in putting the papers together to bring them to this examination, the said assignment having been mislaid by some means, could not be found, and will be looked for and found and filed in the cause, and a copy thereof furnished to the defendants.)

Q. 22. Please look at the paper now shown you, and which is made part of this question, and marked "C. F. M. No. 3," being a certified copy of an amended petition filed in the United States Court of Claims in case No. 3222, in the name of Gazaway B. Lamar against The United States, on the 16th day of April, 1872, and state whether you have seen or had such paper in your possession before, and, if yea, when and where did you receive it?

A. I have seen the paper before, and received it from the clerk of the Court of Claims at Washington, having asked him to certify it legally so that it could be presented in this court.

Q. 24. In the face of this paper occurs the word in the tenth printed line, "And 136 bales on account of Holland, of Richmond, Va." Did you or did you not ever know or have any knowledge of a person
46 named Holland in connection with said company, or said Hambleton in the handling of any cotton in Richmond, Virginia, or in any other respect?

(Objected to as irrelevant.)

A. I did not know such a person, and after diligent inquiries have been unable to obtain any knowledge of any such person.

C. F. McCAY.

Subscribed and sworn to before me this 16th day of Nov'r, 1880.

R. E. STILWELL,
U. S. Examiner, Southern Dist. of N. Y.

Cross-examination of witness reserved.

EXHIBIT C. F. M. No. 1.

C. A. L. Lamar in account with The Richmond Importing & Exporting Company.

CR.

1864.			
July 25.	By compressing 123 bales of cotton, $5.....		$615 00
"	" 10¾ lbs. twine, $10.....		107 50

"	"	telegram to Charleston	3 75
"	"	640 yds. bagging, $10	6,400 00
"	"	984 iron ties, $6	5,904 00
" 28.	"	compressing 308 bales of cotton, $5	1,540 00
"	"	10 lbs. of twine, $12	120 00
"	"	1,047 yds. bagging, $10	10,470 00
"	"	1,232 lbs. rope, or 2,464 iron ties, $12	14,794 00
"	"	storage on cotton C. R. R	11 80
"	"	drayage to and from depot, $1.50 each way	924 00
Sept. 24.	"	amount paid Augusta & Sav. R. R	795 00
			$41,675 05

DR.

1864.			
Nov. 1.	To	cash	$20,987 05
			$20,688 00

47 EXHIBIT C. F. M. No. 2.

[Communicated.]

Messrs. EDITORS: In consequence of numerous inquiries daily as to the price of gold for confederate notes during a certain period, we have, for the convenience of our citizens who may have settlements to make, prepared a table from our books showing actual sales from January 1, 1861, to May 1, 1865, which is at your service should you think proper to publish the same.

Very respectfully,

F. C. BARBER & SON,
Exchange Brokers.

AUGUSTA, GA., *June* 9, 1865.

Price of gold for Confederate notes from January 1, 1861, *to May* 12, 1865, *inclusive.*

1861.			
Jan. 1 to May 1		5 pr.	
May 1 to Oct. 1		10 pr.	
Oct. 1 to Oct. 15			
Oct. 15 to Nov. 15		15 pr.	
Dec. 1		20 pr.	
Dec. 15		30 pr.	
1862.			
Jan. 1		20 pr.	
Jan. 15		20 pr.	
Feb. 1		25 pr.	
Feb. 15		40 pr.	
March 1		50 pr.	
March 15		60 pr.	
April 1		75 pr.	
April 15		80 pr.	
May 1		90 pr.	
May 15		95 pr.	
June 1		95 pr.	
June 15	2	for 1.	
July 1	2	"	
July 15	2	"	
Aug. 1	2 20	"	
Aug. 15	2 20	"	
Sept. 1	2 50	"	
Sept. 15	2 50	"	
Oct. 1	2 50	"	
Oct. 15	2 50	"	
1863.			
Nov. 1 to Feb. 1	3	for 1.	
1863.			
Feb. 1 to March 1	3 10	"	
March 1	3 25	"	
March 15 to May 15	5	"	
May 15	6	"	
June 1	6 30	"	
June 15	7 50	"	
July 1	8	"	
July 15	10	"	
Aug. 1	14	"	
Aug. 15	10	"	
Sept. 1	14	"	
Sept. 15	14	"	
Oct. 1	13	"	
Oct. 15	12	"	

Price of gold for Confederate notes, &c.—Continued.

Nov. 1	13	"	Oct. 15	25	"
1863.			Nov. 1	26 50	"
Nov. 15	15 50	"	Nov. 15	28	"
Dec. 1	20	"	Dec. 1	32	"
Dec. 15	21	"	Dec. 15	35	"
1864.			Dec. 31	51	"
Jan. 1	21	"	1865.		
Jan. 15	20	"	Jan. 1	60	for 1.
Feb. 1	20	"	Jan. 15	65	"
Feb. 15	21	"	Feb. 1	50	"
March 1	26	"	Feb. 15	46	"
March 15	20	"	March 1	55	"
48 1864.			March 15	50	"
April 1	19	for 1.	April 1	70	"
April 15	21	"	April 15	80	"
May 1	20	"	April 20	100	"
May 15	18	"	April 26	200	"
June 1 to July 15	18	"	April 27	300	"
July 15 to Aug. 15	20	"	April 28	500	"
Aug. 15	22	"	April 29	800	"
Sept. 1	20 50	"	April 30	1,000	"
Sept. 15	20 50	"	May 1	1,200	"
Oct. 1	27	"	Which was the last actual sale for Confederate notes.		

Certified copy of the brief of complainant filed in court, No. 3222, on the part of the plaintiff G. B. Lamar against the United States, and marked "C. F. M. No. 4, R. E. S., examiner."

G. De Rosset Lamar, recalled on the part of complainant, and first sworn, testifies as follows:

Q. 1. Mr. Lamar, you are the defendant in this suit, are you not?

A. I am.

Q. 2. Have you heretofore been examined on the part of the complainant as a witness?

A. I have.

Q. 3. Will you now please look at the letter dated "No. 46 West Twenty-first street, New York, June 2, 1874," and addressed to "J. L. Apperson, esq., dear sir," and signed "G. B. Lamar," a copy of which is made part of this question, marked "L. No. 8," and state whether or not you know the handwriting of said letter, and, if yea, please state in whose handwriting it is.

A. I believe it to be in my father's handwriting, G. B. Lamar.

Q. 4. In the examination and handling of the books and paper' of your father, G. B. Lamar, have you not seen or known the name of
49 "Holland" as having dealing' with cotton in connection with either said G. B. Lamar or C. A. L. Lamar? and, *if* yea, please state all you know in reference to such person or his name as appearing on the books of either of said persons.

A. The transactions in my father's books ran back to 1840, and I have no recollection of having seen such name; it may *may* be there and it may not; without I looked at the indexes of the books I could not state positively.

Q. 5. The name of Holland referred to, if not a misprint, purports to be located in Richmond, Virginia, about the year 1864; do you recollect seeing that name as located in that place, in any of these books?

A. I have no recollection of it.

G. DE ROSSET LAMAR.

Subscribed and sworn to before me this 16th day of Nov., 1880.

R. T. STILWELL,
U. S. Examiner, Southern District of N. Y.

Cross-examination of witness waived for the present.

50 EXHIBIT L No. 8.

No. 46 WEST 21ST STREET,
New York, June 2d, 8174.

J. L. APPERSON, Esq:

D'R SIR: I have yours 28th inst., with the copy of my letter to your firm of 24th Sept., 1865, which has some direct reference to the case.

Why is it that your Mr. Hambleton, residing in Baltimore, so near to you, cannot be heard from?

Of course you will see that if the cotton in question belonged to your firm that the other partners must be consulted also.

It is desirable that whatever is done should be done promptly, as I am only stakeholder, and must account soon to the executrix of my son's estate.

Resp'y, &c.,

G. B. LAMAR.

Exhibit L No. 8, R. E. S., examiner.

T. EDWARD HAMBLETON, a witness produced on the part of the complainant, being sworn, testifies as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. My name, T. Edward Hambleton; age, upward of 30; Baltimore City; banker.

Q. 2. Have you any knowledge of the company known as the Richmond Importing & Exporting Company, and, if yea, state how you acquired your knowledge, if any, and what connections you had with the same.

A. I know of the Richmond Importing & Exporting Company, the chief office of which is located in the city of Richmond, Virginia; I was one of the originators of said company, and personal agent for the same.

51 Q. 3. Do you know the plaintiff Charles F. McCay, and, if yea, what connection, if any, did he have with said company, to your knowledge?

A. I know Charles F. McCay; he acted as purchasing agent and had charge of cotton subject to my order.

Q. 4. Between the years 1861 and 1865, inclusive, did you or did you not receive any cotton from said McCay, delivered to you at Savannah, Georgia, and, if yea, please state what disposition, if any, was made of the same.

A. I had cotton, by my instructions, shipped to C. A. L. Lamar, at Savannah, Georgia, by said McCay for compressing, and to be held by said Lamar subject to my order; I should think between five and six hundred

bales; said cotton was received by the said Lamar, and reported by him to me at sundry times; I received from said Lamar, at sundry times, all of said cotton shipped to him, except 244 bales which I left with him just before my leaving for Europe, which cotton was to be held by him subject to instructions by me, since which time I have not received or ordered any cotton from his hands.

Q. 5. Were you or were you not personally acquainted with said C. A. L. Lamar?

A. I was very well acquainted, personally, with Mr. C. A. L. Lamar.

Q. 6. Please look at the paper now shown you, headed "C. A. L. Lamar in account with The Richmond Importing & Exporting Company," dated November 4th, 1864, being the same made part of the deposition of C. F. McCay, marked "Exhibit C. F. M., No. 1," and state, to the best of your knowledge, what said paper is; whether the same was ever in your possession, and, if yea, please state when you received it, from whom, in what manner, and all you know about it.

A. I recognize the paper in my hand as made by me, as the agent of the Richmond Importing & Exporting Company, as settlement or statement of accounts between Mr. C. A. L. Lamar and myself, as agent of of said company, at which time the said company owed to C. A. Lamar the sum herein stated and no more, which sum I promised to pay to the said C. A. L. Lamar in rope and bagging, in lieu of money; I sent said rope and bagging to Mr. C. A. L. Lamar's address, but cannot say that it ever reached him, and am under the impression that it was de-
52 stroyed or captured in Charleston; this paper is in the hand-writing of my former book-keeper, Thomas T. Smith, now deceased.

Q. 7. From what memoranda or data furnished you was said account copied or made out?

A. From data kept in memorandum-book of the business of the Richmond Importing & Exporting Company, kept upon my person during the war.

Q. 8. After the statement and rendition of said account, did you have any, and, if so, what communication, understanding, or agreement with said C. A. L. Lamar as to the same, or the mode of payment thereof; if yea, please state whether the same was written or verbal.

A. I can't say whether or not I had any arrangement with Mr. Lamar after said statement; the statement was made a few weeks prior to my leaving for Europe, and was the closing up of all transactions to that date; my communications with Mr. Lamar were frequent, both by letter and personal interviews, during our business transactions, frequently living in the same house, in Wilmington, North Carolina, during that time; so it is impossible for me to say if any interviews took place between us during the few weeks after closing my account, prior to my starting abroad; since which time I have never seen Mr. Lamar or heard from him.

Q. 9. You have stated that 244 bales of cotton remained in the hands of said Lamar on or about the 1st of November, 1864; will you now please look again at said account, and state whether or not the said 244 bales of cotton forms part of the quantity covered by said account and left in the hands of said Lamar.

A. My impression is that it is part of the lot of cotton, although it's

possible it may have been the part of former shipments which were settled and closed prior to this account; it was a portion of the cotton shipped to Lamar, on all of which shipments this is the only money due.

Q. 10. And you state that after the date of this account, and leaving said 244 bales of cotton in the hands of said Lamar, you gave no further orders in reference thereto, or ever afterwards communicated with him on the subject; is that so, to the best of your recollection?

A. It is, except so far as ordering rope and bagging to be sent to him.

53 And being cross-examined by counsel for defendant:

Cross-q. 11. Wasn't this Richmond Importing & Exporting Company a concern engaged in running the blockade, and in importing merchandise from Europe through the blockade, at that time maintained by the United States?

(Question objected to as immaterial.)

A. It was an importing and exporting company, engaged in importing goods in the South at the time the United States were maintaining an unsuccessful blockade of said ports.

Cross-q. 12. You knew that you were engaged in violating the blockade, didn't you, and that vessels were stationed for the purpose of capturing your property in that attempt?

(Objected to as immaterial and incompetent.)

A. That was the general understanding, but I was never molested or interfered with in going through from the ports.

Cross-q. 13. Didn't you run the blockade at night, carefully avoiding the day, so as not to be molested, if possible to avoid it?

(Same objection.)

A. I always went at night, as decidedly safest.

Cross-q. 14. When did that company become organized?

A. I can't say positively, but I think the latter part of 1861 or early in 1862.

(Counsel for the complainant says he will furnish a copy of the charter.)

Cross-q. 15. Was not this one of a number of companies created by the Confederate Government, under arrangements to aid that Government in the rebellion, by exporting and importing upon terms agreed upon between them?

(Objected to, because it is nowhere shown that the Confederate Government had anything to do with the company in its business transactions, and for the further reason that the charter of the said company will
54 show, when produced, that it was a corporation created by the State of Virginia, and for the further reason that the same is irrelevant and incompetent.)

A. It was not.

Cross-q. 16. Do you mean to swear that that company had no arrangements with the Confederate Government as to terms under which it was permitted to carry on the business of importing and exporting?

(Same objection.)

A. I mean to swear that it was a private corporation, incorporated by the State of Virginia, and to the best of my knowledge and belief never had or made any arrangement with the Confederate Government whatever.

Cross-q. 17. Then you mean to swear that you had no permission from

the Confederate Government to run the blockade and enter and clear from the ports—do you believe that to be true?

(Objected to as the witness has not said—not been asked to state anything respecting the mode of entering or departing with the usual papers granted for commercial purposes, and that the same is wholly immaterial if true.)

A. So far as the company or corporation was concerned, I know of no arrangement save and except that usually required in entering and departing from port; I never was called upon, as agent of the same, to make the clearances; they were usually done by the captains, as well as I recollect it.

Cross-q. 18. Didn't you carry in your vessels materials for the Confederate Government?

(Same objection.)

A. My impression is, the latter year of the war we were compelled to carry out a certain proportion of our cargo in cotton for the use of the Government; I am not positive on this point, as I was absent in Europe during the last year, from December, 1864, I think; we never carried anything into the ports for the Government, to the best of my knowledge and belief, but I think that a law passed by the Confederate Govern-
55 ment made us carry on one vessel, in which we owned one-fourth part, a proportion of cotton for them; our other vessels were lost prior to the passage of that law.

Cross-q. 19. Weren't they lost on the coast trying to escape the blockade vessels?

(Same objection.)

A. One was lost coming into Charleston, by running on a wreck; the other was lost on the coast, in South Carolina, after being chased by cruisers.

Cross-q. 20. Don't you think, upon the whole, then, that your vessels were molested and interfered with by the blockaders—to a limited extent, at least?

(Same objection.)

A. Only one, and that by the stupidity of a pilot that ran it into Lockwood's Folly, by mistake, instead of Wilmington.

Cross-q. 21. Then, as you understand the English language, the blockaders that chased your Charleston vessel ashore didn't molest her; is that the sense in which you use the word molest?

(Same objection.)

A. I never understood the sense of the English language to convey the idea that running on a wreck meant being chased by cruisers; I plainly stated that the vessel lost in Charleston was not molested by cruisers, but ran upon a wreck.

T. EDW'D HAMBLETON.

Subscribed and sworn to before me this 17th day of December, 1880.

R. E. STILWELL,
U. S. Examiner, Southern District of New York.

Examination adjourned to future day, to be fixed by counsel.

56 NEW YORK, *December* 17, 1880.

Pursuant to notice parties met as before.

Mr. G. T. Curtis appears, representing Mr. Dickerson, and states that

Mr. Dickerson is engaged before Judge Blatchford, and cannot attend at present.

Right of objection is reserved to defendant's counsel.

Counsel for complainant offers and puts in evidence a certified copy of the articles of incorporation, or charter, of the Richmond Importing & Exporting Company, passed by the legislature of Virginia February 21, 1863, and marked "Complainant's Exhibit C. F. M. No. 5, R. E. S., examiner."

The counsel for complainant states that the witness T. Edward Hambleton, now under cross-examination, having appeared pursuant to notice, subjecting himself to such further cross-examination as counsel for defendant might deem proper, and Mr. Curtis, appearing as representative of Mr. Dickerson, who, being engaged in court, before his honor Judge Blatchford, cannot attend this cross-examination, and the complainants having no further questions to propound to this witness, the examination is now closed, and by him subscribed, subject, nevertheless, to being recalled by defendant to answer such further questions as they are to propound to him, either orally or by written interrogatories, within a period not to exceed thirty days from this date.

Mr. Curtis states that defendant's counsel, should he deem fit to further cross-examine this witness, will give complainant's counsel due notice of that fact, and of the time when he shall desire to have said witness produced for such cross-examination.

Counsel for complainant does not undertake to reproduce this witness here. He consents to his being further cross-examined in the manner and within the time stated, either orally or upon interrogatories, here or in Baltimore, at the election of the parties, consistent with the convenience of the witness.

57 Mr. Curtis requests the examiner to reserve to defendant's counsel the right to cross-examine this witness orally, defendant's counsel only having been prevented by attending to-day's examination by an actual engagement in court.

CHARLES F. MCCOY, recalled by complainants' counsel.

(The right of objection being reserved to defendant's counsel.)

Q. 1. In your previous examination in this case you were asked if you were the complainant in this suit, and whether you were the assignee of the Richmond Importing & Exporting Company, of the claim for the 136 bales of cotton involved in this litigation, in which you answered that you were such assignee; I will now ask you whether you have looked for such assignment since your last examination; and, if yea, whether you have been able to find the same?

A. I have looked, and have not found it.

Q. 2. Will you please state, to the best of your recollection, in what manner said assignment was executed, and whether the same was or was not such as transferred to you absolutely all and singular the interests and rights of action of the said Richmond Importing & Exporting Company, or the corporators thereof, in and to the 136 bales of cotton involved in the suit; please state your best recollection as to the execution of said paper, and the contents thereof?

(Objected to on the ground that proper foundation has not been laid for

proof by parol of the execution and contents of the written instrument, and as leading and incompetent.)

A. Before signing the bill of complaint which contained a statement that I had such an assignment, I asked my attorneys, Messrs. Stewart & Herbert, to write off such an assignment, which was duly executed and signed by the officers of the company.

This assignment transferred to me absolutely all the rights of the
58 Richmond Importing & Exporting Company to the said 136 bales, and the right of action therefor; this assignment was duly delivered by me to my attorneys.

(Right of cross-examination reserved to defendant's counsel.)

CHARLES F. McCOY.

Subscribed and sworn to before me this 17th day of Dec., 1880.

R. E. STILWELL,
U. S. Examiner, Southern District of New York.

COMPLAINANT'S EXHIBIT C. F. M., No. 5.

COMMONWEALTH OF VIRGINIA:

I, Fred. W. M. Holliday, governor of the commonwealth of Virgina, certify that P. H. McCaull, whose name is signed to the within certificates, bearing date the 6th day of December, 1880, is, and was at the time of signing, clerk of the house of delegates and keeper of the rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such certificates, and that to all his official acts full faith, credit, and authority are due, and ought to be given.

In testimony whereof I have hereunto set my hand as governor, and caused the great seal of the State to be affixed. Done at the city of Richmond this 7th day of December, A. D. 1880, and in the 105th year of the commonwealth.

FRED. W. M. HOLLIDAY.

By the governor:

SHENOM McRAE,
Acting Secretary Commonwealth and Keeper of the Seals.

59 An act to incorporate the Richmond Importing & Exporting Company. Passed February 21, 1863.

1. Be it enacted by the general assembly of Virginia that Thomas W. McCauce, John D. Harvey, Emanuel Miller, T. Edward Hambleton, jr., Andrew L. Ellett, Alfred Moses, William Barrett, James L. Apperson, Robert H. Mawry, William Boulware, William Allen, William G. Paine, and Samuel J. Harrison, together with such other persons and firms as are now connected with them, under the name and style of the Richmond Importing Exporting & Company, be, and the same are, together with their successors and assigns, hereby made and constituted a body corporate, under the said name and style of the Richmond Importing and Exporting Company, for the purpose of owning, navigating, and freighting ships and other vessels engaged in foreign and domestic commerce, trading from the ports of the Confederate States of America.

The capital of the said company shall not be less than five hundred thousand dollars nor more than two millions of dollars, and shall be held in shares of five hundred dollars each.

The affairs of the company shall be managed by a president and board of directors, whose term of office, and their number, shall be determined and elected by the stockholders, and the same board of directors sha'l possess all the corporate powers of the company; provided, however, that nothing in this act shall change or affect the rights, obligations, exemptions, and immunities of the said company under the provisions of the laws of the Confederate States applicable to owners of vessels; and provided that the said company shall be subject to such general laws as may affect corporations of this character.

2. This act shall be in force from its passage, and shall be subject to repeal, modification, or amendment, at the pleasure of the general assembly.

OFFICE KEEPER OF THE ROLLS OF VA.

60 I hereby certify that the foregoing act of assembly is a true copy from the rolls in my office, this 6th day of December, 1880.

R. H. McCAULL,
Clerk House of Delegates and Keeper of the Rolls of Virginia.

An act to amend and re-enact "An act entitled an act to incorporate the Richmond Importing & Exporting Company, passed February 21st, 1863." Passed February 29, 1864.

1. Be it enacted by the general assembly of Virginia that Thomas W. McCauce, John D. Harvey, Emanuel Miller, T. Edward Hambleton, jr., Andrew L. Ellett, Alfred Moses, W. M. Barrett, James L. Apperson, R. H. Mawry, William Boulware, William Allen, William G. Paine, and Samuel J. Harrison, together with such other persons and firms as are now connected with them, under the name and style of the Richmond Importing & Exporting Company, be, and the same are, together with their successors and assigns, hereby made and constituted a body corporate, under the said name and style of the Richmond Importing & Exporting Company, for the purpose of owning, navigating, and freighting ships and other vessels engaged in foreign and domestic commerce, and of buying and selling the products and commodities so freighted or intended to be freighted. The capital of the said company shall not be less than five hundred thousand dollars, nor more than five millions of dollars, and shall be held in shares of five hundred dollars each. The affairs of the company shall be managed by a president and board of directors, whose term of office, and their number, shall be determined and elected by the stockholders, and the said board of directors shall possess all the corporate powers of the company; provided, however, that nothing in this act shall change or affect the rights, obligations, exemptions, and immunities of the said company under the provisions of the laws of the Confederate States applicable to owners of vessels; and provided that the said
61 company shall be subject to such general laws as may affect corporations of this character. This act shall be in force from its passage, and be subject to repeal, modification, or amendment at the pleasure of the general assembly.

2. This act shall be in force from its passage.

OFFICE KEEPER OF THE ROLLS OF VA.

I hereby certify that the foregoing act of assembly is a true copy from the rolls in my office, this 6th day of December, 1880.

P. H. McCAULL,
Clerk House of Delegates and Keeper of the Rolls of Virginia.

JOSEPH B. STEWART, a witness on the part of the complainant, being called and duly sworn, deposes as follows:

(Right of objection reserved to defendant's counsel.)

I am of counsel for the complainant in this case, and prepared the pleadings herein, and am familiar with the papers filed or used in this cause.

That before preparing and filing the bill I was informed, by correspondence and other data, that the Richmond Importing & Exporting Company had assigned and transferred all its interest in and right of action for the proceeds of the 136 bales of cotton described in the bill, but that in order the said assignment more formally executed than appeared to have been done I caused to be prepared a formal written assignment to be executed by the said Richmond Importing & Exporting Company, and by it through the hands of the complainant, Charles F. McCoy, was brought back to my office some time before the commencement of this suit, and was seen and examined by the solicitor of record, Mr. Herbert, and myself, and I believe the same to have been placed in the file of papers appertaining to this suit, and so believed until I called the complainant as a witness, and then looked for said assignment to formally put the same in evidence as a part of complainant's deposition.

62 But on making such examination for said assignment did not find it, as I expected, and have not yet been able to find the same, though I have carefully searched therefor since discovering its absence from where I supposed it was placed as stated, and that I have since continued to look for it without being able to find the same, and believe it is lost or mislaid with other papers in my office or has been accidentally destroyed.

I recollect the contents and character of the paper, and which I, in part, worded, and know that it was a general and absolute assignment of all the assignor, to wit, the Richmond Importing & Exporting Company's right, title, and interest in and to the proceeds of the said 136 bales of cotton involved in the suit, and all and singular the rights of action therefor.

(Deposition objected to on the ground that sufficient foundation has not been laid for the proof, by parol, of the contents of written instruments, and as generally incompetent.)

Right of cross-examination reserved.

JOSEPH B. STEWART.

Subscribed and sworn to before me this 7th day of December, 1880.

R. E. STILWELL,
U. S. Examiner, Southern Dist. of N. Y.

Counsel for complainant states that the direct examination and testimony on the part of the complainant is here closed, subject to the taking of the deposition of David A. Martin, of Easton, Maryland, to prove the fact that the lot of cotton described as Lot 25 and 256 bales in the printed document and exhibit headed "Additional brief by claimant, Gazaway B.

Lamar vs. The United States," made part of the deposition of the defendant in this cause, marked "L No. 2," has been paid by said Gazaway B. Lamar or his estate since the obtaining of the judgment against the United States for the sum of $579,000 and the payment thereof, and was paid out of said judgment to said Martin, known as "one of the Thompson heirs," and that such deposition of said Martin will be taken upon interrogatories, as he is too remote to bring him before this examiner, which said
63 interrogatories will be filed within the next 10 days, unless the defendant shall be advised by his counsel to admit of record that such payment was made, as above stated, before the expiration of said 10 days.

This closing of complainant's testimony is subject also to the rights of cross-examination heretofore reserved to defendant's counsel.

247 BROADWAY,
New York City—10 o'clock *p.* m.

At office of R. E. Stillwell, esq. Present, J. K. Herbert, sol'r for complainant, and E. N. Dickerson, sol'r for defendant.

Pursuant to notice the witness, T. EDWARD HAMBLETON, produced for further cross-examination, and being cross-examined by Mr. Dickerson:

Cross-q. 22. Have you compared the statement, Exhibit C. F. M. No. 1, with any account-books of the Richmond Importing & Exporting Company, and if so, when did you make that comparison, and where are those books?

(Objected to as the exhibit does not purport to be any copy or transcript of any book of the Richmond Importing & Exporting Company.)

A. I never compared it, and to the best of my knowledge and belief never saw the books of the Richmond Importing & Exporting Company.

Cross-q. 23. So far as you know, did Mr. Charles A. L. Lamar ever see that paper, and if so, who was present besides yourself and him, and where was it?

A. I don't know that he ever saw it.

Cross-q. 24. When you say that you had conversations with Mr. Lamar during the war, at Wilmington, don't you know that Mr. Lamar was an officer in the Confederate service during that time, and that when you saw him he was such officer, and on duty?

(Objected to as immateriral and irrelevant.)

64 A. I did not know or do not know that Mr. Lamar was an officer at that time in the Confederate service; I heard of his death during my absence in Europe, and am under the impression that he was not in active service during the time we were together, but cannot speak positively as to whether he held a commission or not.

Cross-q. 25. State exactly when, where, and how often you saw him during the war?

(Objected to as immaterial and irrelevant.)

A. I cannot state exactly when or how often I saw him during the war; it was freequently—sometimes in Savannah, sometimes in the *the* island of Bermuda, but principally in Wilmington, North Carolina.

Cross-q. 26. What was he engaged in at Wilmington, and in what year was he there?

(Same objection.)

A. I won't be positive as to time, as it is many years ago, but I think in the year 1862, and his business—I can't say what.

Cross-q. 27. How long was he there with you?

(Same objection.)

A. I can't say.

Cross-q. 28. Wasn't he there with the army when you saw him, and as an officer in it?

(Same objection.)

A. If he was I was not aware of his connection; I am satisfied that he was not in command, at the time, of troops stationed there; we left Wilmington together on one occasion, though I wan't be positive about that; but we were in the island of Bermuda together.

Cross-q. 29. If you did leave Wilmington with him for Bermuda, or other foreign port, in what vessel did you go?

(Same objection.)

65 A. I can't say, as I am not positive; as I answered before, that I went on the same vessel with him.

Cross-q. 30. Did you leave Wilmington in one of the blockade runners of the Richmond Importing & Exporting Company?

(Same objection.)

A. I did not.

Cross-q. 31. Didn't you sail from Wilmington in a blockade-runner?

(Same objection.)

A. I left Wilmington on two separate occasions; once alone on the R. E. Lee, and once accompanied by my wife on the steamer Virginia. The former vessel belonged, I think, to private parties; the latter to the Petersburgh Importing Company.

Cross-q. 32. Didn't you on both occasions go on a blockade-runner which did run the blockade while you were aboard of it?

(Same objection.)

A. They may have run the blockade, but I didn't see anything of it.

Cross-q. 33. Then you mean to say to the court, do you, that you don't know that you were engaged in running the blockade on both those occasions, and that if it were so it was without your knowledge?

(Same objection.)

A. I mean to say to the court that if it was a blockade it was so ineffectual as not to cause me any fear of capture.

Cross-q. 34. On both occasions you went out by night, didn't you?

(Same objection.)

A. We did.

66 Cross-q. 35. And on both occasions you sailed by night for the purpose and with the intent of eluding the blockading vessels which you knew were stationed there to intercept the blockade-runners, didn't you?

(Same objection.)

A. I sailed as people usually sail when the vessel goes to sea under command of her captain, and I was merely a passenger on board, and had no control of the vessel.

Cross-q. 36. Didn't you know perfectly well that the port was under blockade, and that the reason of running by night was to elude the blockading vessels?

(Same objection.)

A. That it was generally rumored that vessels were lying off the coast, and especially the port of Wilmington, for the purpose of preventing ingress and egress; but of my own knowledge I knew nothing beyond hearsay and newspaper accounts.

Cross-q. 37. Haven't you such information on the subject that when you went aboard those vessels you believed they were about to run the blockade, and that when they sailed at night they did so for the purpose of more effectually eluding the blockaders?

(Same objection.)

A. I had such information from current rumor only.

Cross-q. 39. Didn't you go out on one or both of those occasions for business of the Richmond Importing & Exporting Company?

(Same objection.)

A. On both occasions I went on that business.

Cross-q. 40. Wasn't that business connected with the running of the blockade, and importing and exporting property of that company through the blockade?

(Same objection.)

67 A. The business of that company was importing and exporting of goods within the Southern States wherever they could land them with safety.

Cross-q. 41. What do you mean by "with safety?"

(Same objection.)

A. Getting them in without molestation.

Cross-q. 42. Molestation from whom?

(Same objection.)

A. As I said in my former answer, it was currently rumored that cruisers were watching to prevent the ingress and egress of vessels, and with a view of avoiding any such interference is what I mean by molestation.

Cross-q. 43. Were you not informed that Mr. Charles A. L. Lamar, when he was at Wilmington and went to Bermuda, was going to Europe as an agent of the Confederate Government?

(Same objection.)

A. I may have been so informed, but I have no recollection of it.

Cross-q. 44. Then, so far as you now know, you had no information of Mr. Lamar's business at Wilmington or at Bermuda?

(Same objection.)

A. No; I can't recollect what his business was.

Cross-q. 45. Were you not one of the incorporators of the Richmond Importing & Exporting Company?

A. I was.

Cross-q. 46. So far as you know, when did that corporation last meet, and where, and who was present?

A. I cannot say when I last met; it was some years after the war, likely in 1867 or 1868, at the city of Richmond; that was the last time I met them; I think the directors generally were present.

Cross-q. 47. Name the persons who were present.

A. At this length of time I won't be positive, but my impres-
68 sion is, Samuel Harrison, Thomas W. McCauce, Andrew Ellet, Apperson; I mean by these persons the same whose names appear in the charter.

Cross-q. 48. Did that company have any office or place of business in Richmond, or elsewhere, after 1865? And if so, state where that office was, who owned it, and how long it was occupied by that company.

A. My impression is that the office was retained up to the time I mentioned in my former answer; it was located on Main street, in Richmond, Virginia; I don't know who it belonged to.

Cross-q. 49. Have you any impression about the number of that house in Main street?

A. I think it was the corner of Bank and Main streets.

Cross-Q. 50. Which corner?

A. It was on the upper corner opposite the American Hotel.

Cross-q. 51. On what story in the building; how many rooms did the company occupy during those years?

A. It was the basement; I don't know if the company occupied more than desk room; the president and secretary of the company were conducting business in the same place.

Cross-q. 52. Did the company have a sign out at that place during those years, or any visible indication of its existence there during those years; if so, what?

A. I don't know whether they had or not, as I said in a former answer; it was my impression that the organization had continued there until the time stated; my impression is brought about from the fact of my receiving a notice signed by the secretary of the company, about that time, to meet at that place, which I had always known as the office of the company.

Cross-q. 53. Had you any other fact leading you to that impression, such as the election of officers, the transaction of business of any kind during those years or at any time after the war? And, if so, state that other fact of your knowledge which gives you that impression.

A. The other fact—the meeting was called to settle up the affairs of the company so far as my connection as agent of the same, and to make returns of property then in my hands.

Cross-q. 54. When was that meeting, when the affairs of the company were settled up as you state?

(Objected to as assuming what is not in the evidence.)

69 A. It was not a settlement of the company's affairs only so far as my accounts with the company were concerned; I can't give the the date of the time; my reason for not having sooner done it was the fact that I feared trouble with the Government for charges laid against me at Washington.

Cross-q. 55. Can you fix the time of that meeting within a few years?

A. I have already answered the question to the best of my recollection as 1867 or 1868.

Cross-q. 56. Isn't this "other fact" that you have been detailing the meeting of 1868 which you testified to in answer to cross-question 46?

(Objected to.)

A. It is the same meeting; and from the nature of the question propounded I understand this to be the business that was transacted at said meeting.

Cross-q. 57. So far as you know was there any election of officers during those years after the war; and, if so, were you present at such election?

A. I know of none.

Cross-q. 58. Who were the president and secretary who you said had their place of business in the basement, corner of Main and Bank streets, Richmond, where you say the office of the Richmond Importing & Exporting Company was?

A. Harrison and Apperson.

Cross-q. 59. Were not Harrison and Apperson partners in business?

A. I don't know whether they were or not.

Cross-q. 60. Didn't they represent themselves to be so by a sign having their names on it as a firm?

(Objected to as immaterial and irrelevant.)

A. I can't say—I don't know that I ever saw their sign in my life.

Cross-q. 61. Have you a strong impression about it as you have about the rumored existence of the blockade at Wilmington during the war, or did you never hear of it until to-day—that these two gentlemen were engaged in business together?

(Same objection.)

70 A. I have no impression at all about it—I may have heard it—and upon reflection think there was a firm of—I can't call the name of the firm.

Cross-q. 62. Upon reflection don't you think this basement was an auction room where Mr. Harrison and Apperson, or other parties, carried on the auction business?

A. I don't think it was.

Cross-q. 63. What kind of business besides the desk of the Richmond Importing & Exporting Company occupied that basement during these years after the war—if it was not the auction business?

(Objected to as immaterial and irrelevant.)

A. I was not in Richmond for the purpose of investigating what business was carried on, and hence paid no attention to it, as I was only in Richmond for a few hours.

Cross-q. 64. Can you tell us how that desk was distinguished which constituted the location of the Richmond Importing & Exporting Company, and who held that desk for that company, and in what part of that basement it was situated?

(Same objection.)

A. I have not said there was any special desk kept for the company; in my former answer I assigned my reason for supposing it to be still the office of the company; I have never made a positive assertion that the company maintained it as an office, but said, and repeat from the fact of its being the old office of the company and the meeting being called there by the officers of the company, I concluded it still had its office there.

Cross-q. 65. Did you ever know of any other meeting of the officers of that company since the one in 1867 or 1868; and, if so, who besides yourself was present?

A. I never knew of any other meeting.

T. EDW'D HAMBLETON.

Sworn and subscribed to before me this 5th day of May, 1881.

R. E. STILWELL, *Examiner*.

71 NEW YORK, *June* 1, 1881.

At office of R. E. Stillwell, esq., 247 Broadway. Present, counsel for complainant as before.

Mr. Curtis, representing Mr. Dickerson, the counsel for defendant, states that owing to professional engagements Mr. Dickerson is unable to be present for some short time, and asks that the direct examination of witness be taken subject to the right of Mr. Dickerson to object and cross-examine when he arrives.

The counsel for complainant consents to the above reservations.

It is also consented that the witness, Samuel J. Harrison, be sworn by James M. Tulley, a notary public, and the examination proceed with the same effect as if the commissioner, R. E. Stillwell, was present.

SAMUEL J. HARRISON, a witness on part of the complainant, being produced, and being first duly sworn, testifies as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. Samuel J. Harrison; age, 54 years; New York City; occupation, broker.

Q. 2. Do you or not know of a company or body corporate called the Importing & Exporting Company of Richmond, State of Virginia?

A. I do know of the Richmond Importing & Exporting Company of Richmond, Virginia.

Q. 3. When and where was said company incorporated?

A. Incorporated by the general assembly of the State of Virginia, February 21, 1863.

Q. 4. Please look at the paper now shown you, filed in this cause as part of the deposition of Charles F. McCay, and marked "C. F. M., No. 5," and state whether or not the same is the act of incorporation to which you refer?

A. I think so; that is the act of incorporation.

72 Q. 5. What, if any, was your relation to the said company, and especially what, if anything, was your relation to it on the 3d day of March, 1879?

A. I was president of the company.

Q. 6. Did or did not said company on said 3d day of March, 1879, assign to Charles F. McCay, the plaintiff herein, all its right, title, and interest in and to the 69 bales of cotton involved in this suit, marked "E T Y" or "E T A," and 67 bales marked "X Y Z," in all, 136 bales?

(Objected to as leading and incompetent.)

A. Yes.

Q. 7. Was said assignment in writing, and if yea, will you please look at the paper now shown you, a copy of which is made part of this question, marked "S J H, No. 1," and state whether or not the same is the assignment so made by said company?

(Same objection.)

A. It is.

Q. 8. Please state what, if any, object or purpose was intended other than such as is apparent on the face of said paper, as to why your company made and executed the assignmemt of said cotton to the complainant in this suit.

(Same objection.)

A. To wind up the affairs of the company.

SAMUEL J. HARRISON.

Subscribed and sworn to before me this 1st day of June, 1881.

JAMES M. TULLY,
Notary Public, N. Y. County.

Complainant's counsel agrees to reproduce the witness for cross-examination on or before Wednesday, June 8, 1881, right of objection reserved.

73 247 BROADWAY, NEW YORK CITY,
June 8, 1881—11 a. m.

At office of R. E. Stillwell. Present, counsel as before.

Pursuant to notice the witness, SAMUEL J. HARRISON, produced for cross-examination, and being cross-examined by Mr. DICKERSON:

Counsel for complainant offers in evidence the assignment from the Importing & Exporting Company of Richmond, in the State of Virginia, to Charles F. McCay, dated March 3, 1879, and marked "Complainant's Exhibit, S. J. H., No. 1."

Counsel for the defendant objects to the admission of the assignment in evidence, because there is no legal proof of its due execution by the Importing & Exporting Company of Richmond, the paper purporting to have been executed under the seal of the company.

Cross-q. 9. How long have you resided in the city of New York?

A. Sixteen years; a part of that time I have been absent on business.

Cross-q. 10. When were you in Richmond last?

A. About four years ago.

Cross-q. 11. Explain what you mean by your answer to the 8th direct question, in which you say that the purpose of the assignment, referred to in that question, was to "wind up the affairs of the company."

A. To close all outstanding business connected with it.

Cross-q. 12. State all the facts and circumstances, as nearly as you can, under which a paper, purporting to be an assignment to McCay, was brought to your knowledge.

(Objected to as immaterial, because it calls for matters which are res inter alios acta, and is wholly immaterial to any issue to be tried in this case between the complainant and defendant.)

A. The conversations with Mr. McCay and the conversations and correspondence with the secretary of the company.

74 Cross-q. 13. Is that all you know about it?

(Same objection.)

A. No; I signed the paper.

Cross-q. 14. Is that all you know about it?

(Same objection.)

A. I suppose that's all there is to know.

Cross-q. 15. When and where did you first see the paper that you signed?

(Same objection.)

A. I do not remember.

Cross-q. 16. Do you remember whether it was in New York or elsewhere?

(Same objection, and the further fact that it is immaterial to the defendant as to when or where it was executed, as the paper upon its face states to be a transaction between the company, as assignor, and the complainant in this suit as assignee, of certain personal property and private rights, which disturbed no rights of the defendant.)

A. No; I do not.

Cross-q. 17. Don't you think it was in Europe somewhere?

(Same objection.)

A. No, sir.

Cross-q. 18. Are you sure it was in the United States?

(Same objection.)

A. I think it was in the United States.

Cross-q. 19. Was it east of the Rocky Mountains or the Alleghanies?

(Same objection.)

75 A. It was east of the Rocky Mountains, but what other place I don't remember.

Cross-q. 20. Couldn't you refresh your memory enough to say within a thousand miles of where it was shown you?

(Same objection, and the witness is advised by the counsel for complainant that he is not obliged to answer the question unless he chooses to do so.)

A. I suppose if I was within a thousand miles of the place I signed it I could.

Cross-q. 21. Don't you know that you are within a thousand miles of the place you signed it as well as you know anything else in the world?

(Same objection.)

A. No, I don't.

Cross-q. 22. Then, so far as you know, that paper may have been brought to you, and if you signed it you may have signed it within a thousand miles of the city of New York; do you mean to swear to that?

(Same objection, and the witness again instructed that he need not answer the question further than he has stated in his previous answer unless he elects so to do.)

A. I have stated that I do not remember at what place I was when I signed it.

Cross-q. 24. Don't you remember whether it was a thousand miles away from New York or not?

(Same objection as before.)

A. No, I don't.

Cross-q. 25. In March, 1879, you had a regular place of business, and was doing business in the city of New York, were you not; or can't you remember anything about that?

(Same objection.)

A. I was.

76 Cross-q. 26. Can you remember now whether in March, 1879, you were a thousand miles away from New York; and, if so, where were you?

(Same objection, with the further objection that the witness having in answer to repeated questions stated fully and frankly that he signed the agreement transferring the 136 bales of cotton or the proceeds thereof alleged to be in the hands of the defendant as president of the company

to the plaintiff in this action for the purpose of winding up the affairs of said company, but does not remember at what place he signed it, which exhausts his information and recollection on the subject, and that all questions, so often repeated, as to whether he was within a thousand miles of any given place, are impertinent, illegal, and improper.)

A. I was not a thousand miles away from the city of New York.

Cross-q. 27. Where was your place of business in New York at that time, if you remember?

(Same objection.)

A. No. 7, Exchange Court.

Cross-q. 28. Do you happen to know a person named Russell A. Hills; and, if so, who is he?

A. I do; he is a gentleman who was in the habit of coming into our office frequently.

(Question and answer objected to until it is shown that Russell A. Hills has something to do with the subject-matter of this suit, he not being mentioned in the deed as a party thereto.)

Cross-q. 29. When did you last see Mr. Russell A. Hills, if you can remember?

(Objected to for the reasons above stated.)

A. About a month ago.

77 Cross-q. 30. Were Mr. Russell A. Hills and you ever, so far as you know and remember, absent from New York together, and in each other's company; and, if so, where were you?

(Objected to, and the witness advised by complainant's counsel that he need not answer unless he chooses to do so, because the same is wholly irrelevant and impertinent so far as anything appears in this suit.)

A. I do not remember ever to have been in the company of Mr. Russell A. Hills outside the city of New York.

Cross-q. 31. Can you remember who brought you the paper purporting to be an assignment to McCay, and asked you to sign it?

(Objected to as immaterial.)

A. I do not remember.

Cross-q. 32. Is your memory good enough to enable you to say whether you prepared that paper yourself, or whether somebody brought it to you and asked you to sign it?

(Same objection.)

A. I do not remember.

Cross-q. 32. Is your memory good enough to enable you to say whether you prepared that paper yourself, or whether somebody brought it to you and asked you to sign it?

(Same objection.)

A. I do not remember.

Cross-q. 34. Look at that paper which has been offered in evidence, and say whether you recognize the handwriting of the body of it; and, if so, whose it is, so far as you know.

A. I do not know that handwriting.

Cross-q. 32. I observe that the words "Richmond Importing and Exporting, by Harrison, pres't," and written in pencil on that paper; do you know whose handwriting that is?

A. I do not know whose handwriting that is.

Cross-q. 35. Were those words there when you first saw the paper?

A. I do not remember.

Cross-q. 36. Can you remember who was present when the paper was shown you or produced to you for your signature?

A. No; I do not remember.

Cross-q. 37. Can you remember, in substance, what was said to
78 you by anybody which induced you to sign your name, if you did sign it, to that paper when it was to you, and your signature was requested?

(Same objection.)

A. No; I do not remember.

Cross-q. 38. Do you remember whether anybody paid you any money for signing that paper; and, if so, who of the persons whom you don't remember being there paid that money, and how much was it?

(Objected to, as the paper states upon its face the consideration which moved the parties to execute the same, and that it is not competent to prove any other consideration, whatever might have been the ultimate intention of the company in executing it, and that there is nothing alleged or shown to justify the assumption that the witness, as president of said company, received any separate and distinct consideration or reward for affixing his official signature thereto.)

A. I do not remember any money having been paid to me for signing that paper.

Cross-q. 39. Had you any agreement with any one that you should, in any capacity whatever, receive any compensation at any time for executing that paper; and, if so, who made that agreement, and when was it made?

(Objected to for the reason before stated, and for the further reason that for the purpose of this suit the paper itself imparts its own consideration, and as to what may be the ultimate accounting and settlement between the plaintiff, as assignee, and the company, its present directors and stockholders, as assignors in interests, are all res inter alios acta, with which the defendant in this suit has nothing to do, and for the inquiring into which there is no foundation laid in the pleadings.

A. I do not remember any agreement for remuneration for executing the paper.

Cross-q. 40. Was there any agreement or understanding, so far as
79 you know, that the proceeds, if any, should enure to the benefit of any other person than McCay; and, if so, for whose benefit?

(Same objection, and for further reason that the paper shows the assignment to be that of the company, and the witness has stated it was adopted as a convenient means of settling up the affairs of the company, the proceeds of which belonged to its stockholders or their assignees, whoever it may be, which in no manner concerns the defendant in this suit.)

A. The proceeds were to enure to the company besides to Mr. McCay.

Cross-q. 41. Then the consideration of one dollar was not for the purpose of conveying an absolute title, but for the purpose of covering an arrangement whereby the proceeds would come back in whole or in part to the assignors; isn't that what you understood it to be?

(Objected to for the reasons stated, and for the further reason that the assignment itself recites that "for and in consideration of the sum of one dollar and other good and valuable considerations it thereunto moving," was the

consideration deemed sufficient by the parties for the signing of said assignment, and which cannot be inquired into in this suit, no odds what ultimate disposition, distribution, or apportionment the company may have designed to make of such proceeds when recovered from the fund alleged to be in the hands of defendant, should such occur, and which in no manner affects or is material to the defense relied upon by the defendant to withhold the payment thereof.)

A. I suppose the paper is drawn in the usual form and expresses what it means.

Cross-q. 42. Did you suppose it conveyed the interest of the assignors, if they had any, and that they no longer had any interest in the proceeds?

(Objected to for the reason before stated, and for the further reason that the question does not call for a fact within the knowledge of, but for an opinion or conclusion of the witness.)

80 A. I suppose the paper purports to assign the interest of the company for the purposes expressed.

Cross-q. 43. Didn't you know that there was another agreement between McCay and the parties who attempted to make that paper, or some of them, whereby they were to have the benefit, in whole or in part, of whatever he might do under the pretended assignment?

(Objected to for the reasons stated, and for the further reason that the witness has distinctly stated and repeated that the assignment to McCay was a mode adopted of winding up the affairs of the company, and that besides any specific amount due McCay, that the remainder would enure to the company, in neither of which questions the defendant in this suit had any concern.)

A. I do not remember of another agreement; I have before stated that the company was interested as well as Mr. McCay in what might be recovered in this suit.

Cross-q. 45. If there was no agreement to that effect, will you explain how the interest of the company was preserved and how it was capable of being proved?

(Question objected to for reasons stated, and for the further and specific reason that it is wholly immaterial to the defendant, who is charged with holding funds belonging to the plaintiff as sole assignee of the company, in what manner the plaintiff and the company or the stockholders thereof have agreed or may hereafter agree to dispose of or distribute their assets or the proceeds of this suit, should they be so fortunate as to recover it, and that the pressing of these repeated questions are immaterial and impertinent.)

A. I did not say there was no agreement. I said I did not remember any agreement.

Cross-q. 40. Then, so far as you know, there is none; isn't that so?

(Objected to for the reasons before stated, and for the further and specific reasons that the witness has more than once stated that after settling

81 with Mr. McCay, to whom the whole proceeds are assigned for the purposes of this suit, that there be an accounting between the company and its stockholders who are interested therein, as a matter of right, and that in none of these questions the defendant in this suit has any concern.)

A. There may be an agreement in the hands of the secretary of the company.

Cross-q. 41. Have you ever made any agreement to that effect or been a party to any such; and if so, when, where, and with whom was it made?

(Same objection.)

A. I have, no doubt, assented to such agreement, but when and where I do not recollect.

Cross-q. 42. And have you any idea or memory as to the person with whom you made that assent?

(Same objection.)

A. Whether in conversation with Mr. McCay or by correspondence with the other directors in Richmond, or both, I do not now remember.

Cross-q. 43. You don't remember, then, when, where, or how you gave your assent?

A. No; not as to time or place.

Cross-q. 44. Wasn't Mr. Stewart or Mr. Herbert present at the time that paper was brought to you at Exchange court, New York?

A. I do not remember.

Cross-q. 45. Did you never see either of them on the subject at or before the time it was brought to you?

A. I have seen both of these gentlemen very frequently on the subject.

Cross-q. 46. And didn't you sign that paper in consequence of interviews with one or both of them and of understandings had with them on the subject?

(Objected to for reasons before stated, and for the further and specific reason that the question inquires into the matters of advice given by counsel to their client, and because it affects no right of the defendant involved in this suit, whether such advice was given or not.)

82 A. I don't remember.

Cross-q. 41. Is your memory an average good one, as far as you understand it, or have you learned from your general intercourse with men that your memory is very bad?

A. I hope my memory is a fair average.

Cross-q. 42. Do you remember enough about the business to know whether you personally will be a gainer or expect to be a gainer in case this suit should prevail?

(Objected to as irrelevant.)

A. Yes; as a stockholder I expect to be a gainer.

And being examined on the redirect by Mr. STEWART:

Redirect Q. 43. How long had you resided in Richmond, Virginia, previous to your removing to New York in 1865?

A. For 17 years.

Redirect Q. 44. During that time and up to the present time have you ever known of a man named Holland, who was residing there, connected with the buying and selling of cotton, or connected with any company engaged in that behalf?

A. No; I do not remember any such person.

Redirect Q. 45. Please look again at the paper or assignment made part of your testimony in this cause and marked "S. J. H. No. 1," and especially to the signatures attached thereto, and state whether or not they are the proper signatures of said parties within your knowledge.

(Objected to as not competent proof of the execution of that paper.)

A. The signatures of my own as president and as a director were both written by me; those of Thomas W. McCauce, Andrew L. Ellet, and J. L. Apperson are, in my opinion, genuine. I have often seen them write.

SAM'L J. HARRISON.

Subscribed and sworn to before me this 8th day of June, 1881.

JAMES M. TULLY,
Notary Public, N. Y. Co.

83 EXHIBIT S. J. H. No. 1.

Know all men by these presents that the Importing & Exporting Company of Richmond, in the State of Virginia, party of the first part, for and in consideration of the sum of one dollar, and other goods and valuable considerations it thereunto moving, to it in hand paid by Charles F. McCay, of Baltimore, in the State of Maryland, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has bargained, sold, assigned, and by these presents, does hereby bargain, sell, and assign unto the said party of the second part, his executors, administrators, and assigns, all its right, title, and interest in and to 69 bales of cotton, marked "E T Y," or "E T A," and 67 bales marked "X Y Z," in all 136 bales, formerly stored with Charles A. L. Lamar, late of the city of Savannah, in the State of Georgia, and the proceeds thereof collected from the United States as part of a judgment of the Court of Claims in favor of the late Gazaway B. Lamar, and now in the hands of G. De Rossett Lamar as the sole executor of said Gazaway B. Lamar; and the party of the first part hereby authorizes and empowers the party of the second part, in his own name, to ask, demand, sue for, recover, receive, and enjoy the money due and to grow due thereon.

In witness whereof the party of the first part has caused these presents to be executed and delivered by its president and directors under its seal, which said seal being lost or mislaid, a seal as adopted for this purpose is hereto affixed this third day of March, 1877.

RICHMOND IMPORTING & EXPORTING COMPANY, [L. S.]
By SAM'L J. HARRISON, *President.*
SAM'L J. HARRISON.
THOS. W. McCAUCE.
ANDREW L. ELLETT.
J. L. APPERSON.
Directors.

In presence of—
Witness to signature of company and Harrison, director.
RUSSELL A. HILLS,
7 *Exchange Court, New York.*

Witness as to McCauce, Ellett, and Apperson, directors.
T. D. DUNLOP.

84 EXH. C. F. M. No. 10.—J. A. S. *Ex'r.*

In the Court of Claims of the United States.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

In this case the court finds the facts to be as follows:

"At the time of the capture of the City of Savannah, Geor-
"gia, in December, 1864, by the military forces of the United
"States, under General Sherman, the CLAIMANT OWNED in said
"city ninety-one bales of Sea Island cotton, and three thou-
"sand one hundred and eighty-four bales of upland cotton, all
"of which were captured by said forces and shipped to Simeon
"Draper, agent of the Treasury Department at the City of
"New York, and there sold by him, and the proceeds thereof,
"amounting to $231.79 per bale for the Sea Island cotton, and
"$175.53 per bale for the upland cotton, aggregating five
"hundred and seventy-nine thousand three hundred and forty-
"three dollars and fifty-one cents ($579,343.51), paid into the
"Treasury of the United States.

"Upon the FOREGOING FACTS, THE CONCLUSION OF LAW IS,
"that the claimant is entitled to recover the proceeds of said
"cotton as stated."

86 U. S. circuit court, southern district of New York.

CHARLES F. McCAY.
vs.
G. DE ROSSETT LAMAR. } In equity.

Testimony taken on the part of the defendant under and pursuant to the sixty-seventh rule of the Supreme Court of the United States, as amended, before John A. Shields, esq., a standing examiner of said court.

NEW YORK, *December* 18, 1881.

Present, Joseph B. Stewart, esq., and J. K. Herbert, esq., of counsel for compl't, and E. N. Dickerson, esq., of counsel for def't.

Counsel for defendant offers in evidence a certified copy of the record in the United States Court of Claims, in the case of G. B. Lamar vs. The United States (excluding therefrom, however, the briefs offered on behalf of the claimant in said case, certified copies of which have already been offered in evidence by the complainant), and the same is marked "Exhibit Record Lamar vs. The United States, J. A. S., Examiner."

87 Complainant's counsel consents to the introduction of said record, reserving all legal objections, however, to the competency and relevancy of the matters therein contained.

It is stipulated between the counsel that the expenses incurred by Mr. G. B. Lamar, in recovering the sum of $579,343.00 awarded by the Court of Claims, amounted to 100,000.

It is also agreed between counsel that the exhibits, including letters and documentary evidence which were presented and marked by the examiner in the preceding examination on the part of the complainant, are duly offered in evidence subject to all legal objections to their competency and relevancy.

Defendant rests.

The complainant's counsel, under the foregoing stipulation, consents and formally offers in evidence the paper purporting to be a certified copy of the judgment rendered by the United States Court of Claims in the case of G. B. Lamar vs. The United States, No. 3222, and certified to by the clerk of the court, under the seal thereof, on the 15th day of December, 1875, which is marked "Exhibit C. F. M. No. 10, J. A. S., Ex'r."

Complainants' counsel, by like consent and stipulation, recall the witness, SAMUEL J. HARRISON.

Q. 1. In your preceding examination you have stated that you are president of the corporation called the Richmond Importing and Exporting Company. I now ask you to state whether said company organized under its charter.

(Counsel for defendant objects to the question, because the organization of the company is a matter of record, and cannot be proved by oral testimony.)

A. It did.

Q. 2. Did or did not the stockholders of said company ever fix the number of which its board of directors should consist?

(The same objection.)

88 A. It did.

Q. 3. Who were they, to the best of your recollection, and what was the number?

(The same objection.)

A. Thomas W. McCans, James L. Apperson, Andrew L. Elliott, John D. Harvey, and myself.

Q. 4. Did said company ever adopt a seal?

(The same objection.)

A. It did.

Q. 5. Now, please state whether or not there was an amendment to the charter of said company; and if yea, state, to the best of your knowledge, when said amended charter was passed, and whether the same, the terms thereof, was formally accepted by your said company.

(The same objection, and as generally incompetent.)

A. An amendment was applied for and formally accepted, but I do not remember the precise date.

Q. 6. Have you or have you not the books, records, by-laws, and seal of said company in your possession; and if you say you have not, will your please tell, to the best of your recollection and knowledge, what became of the same?

A. I have not; my impression is that they were all destroyed by the great fire at Richmond, at the time of the surrender of the city, in 1865, at which time the company's *oecr-* was burned.

Q. 7. Are all the members of the said board of directors of that company still living. And, if not, please state who of them is dead.

A. Mr. John D. Harvey is dead.

SAM'L J. HARRISON.

89 EXHIBIT RECORD LAMAR VS. THE UNITED STATES.—J. A. S., *Examiner.*

Petition.—Filed April 1, 1868.

U. S. Court of Claims. December term, 1867.

GAZAWAY LAMAR *vs.* THE UNITED STATES. } 3222.

To the honorable Court of Claims:

The petition of Gazaway B. Lamar, a loyal citizen of the United States, resident in Savannah, Ga., respectfully represents:

That in the year 1865 your petitioner was the owner and in possession of 4,185 bales of cotton, of the average weight of 500 lbs. each, and of the aggregate weight of 2,082,500 lbs., of which 3,275 bales were stored in the city of Savannah, Ga., and shortly after the occupation of that city by the military forces of the United States, in January, 1865, were seized by order of Major-General W. T. Sherman without the consent of your petitioner, and against his will; that no part of said cotton or its proceeds was appropriated in any way to the use of the Army or Navy of the United States, but was turned over by the officers seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States; that 522 bales were seized in the month of December, 1865, at Thomasville, Ga., where said cotton was then stored, by A. G. Browne, Treasury agent, and by him shipped to Simeon Draper, U. S. Treasury agent at New York, by whom it was sold, and the net proceeds thereof paid into the Treasury of the United States; that 426 bales was seized in the months of October, November, and December, 1865, near Tallahassee, in the State of Florida,
90 when it was then stored by Samuel G. Cabell, Treasury agent, and subsequently shipped to New York, when it was sold by Simeon Draper, U. S. Treasury agent, and the proceeds thereof paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said lots of cotton were sold, or the expenses attending the seizure, shipment, transportation, and sale thereof, but he states on information and belief that the net proceeds thereof which have been paid into the Treasury amount to the aggregate sum of one million forty-six thousand two hundred and fifty ($1,046,250) dollars.

Your petitioner avers that his property having been taken possession of by the United States Government and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor, by paying him all that said cotton was reasonably worth at the times and places it was so taken from him as aforesaid. And your petitioner shows

that said cotton was worth, at the times and places of its seizure, fifty cents per pound, or the aggregate sum of one million forty-six thousand two hundred and fifty dollars, which amount he is entitled to receive from the United States under the implied contract as stated above.

Your petitioner further shows that if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to receive the net proceeds of it, amounting to the said sum of one million forty-six thousand two hundred and fifty dollars ($1,046,250), under the provisions of the third section of the act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that some days subsequent to the capture of the city of Savannah, to wit, on the 6th day of January, in the year 1865, he voluntarily took the oath prescribed by President Lincoln in his proclamation of December, 1863, and reiterated in his proclamation of March, 1864; that not being included in any of the classes excepted, he was by the terms of said proclamations restored to all his rights of property except as to slaves, to which he was entitled as a citizen of the United States previous to his participation in the rebellion; that since his restoration to citizenship, as above set forth, that he has borne true allegiance to the Government of the United States, and that he has not aided, abetted, or given encouragement to rebellion against said Government, and that he has since kept and maintained inviolate the oath taken by him under said proclamations.

91

Your petitioner further shows that the seizures of his cotton at the different times and places, as herein before set forth, were all made subsequent to his resumption of allegiance to the Government of the United States under the above-named proclamations of President Lincoln and upon the invitation of the general in command of the Federal forces in the city of Savannah, and in accordance with the declaration of President Lincoln in his message to Congress of December, 1864, that the door for amnesty and pardon, upon the specified terms of his proclamations of December, 1863, and March, 1864, was still open to all who might choose to avail themselves of the opportunity to enter and be again received into the national family.

And your petitioner further shows that on the 6th day of October, 1866, he voluntarily took the oath prescribed in the proclamation of President Johnson, dated May, 1865.

G. B. LAMAR.

DISTRICT OF COLUMBIA,
County of Washington, ss:

G. B. Lamar, being duly sworn, deposeth that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made, except as in said petition is stated; that claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

G. B. LAMAR.

Sworn and subscribed to before me, a notary public in and for said

county and District of Columbia. Witness my hand and official seal this 31st day of March, A. D. 1868.

[SEAL.] N. CALLAN, *Notary Public.*

Claimant's address is:

Claimant's solicitors: Hughes, Denver & Peck, No. 258 G street, Washington, D. C.

92 *Amended petition.—Filed May* 12, 1869.

U. S. Court of Claims. December term, 1868.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } 3222.

To the honorable Court of Claims:

The amended petition of Gazaway B. Lamar, a citizen of the United States, respectfully represents:

That in the month of December, 1864, he was, and for a long time prior thereto had been, the owner of 4,185 bales of cotton, of the aggregate weight of 2,082,500 lbs., stored in the city of Savannah, in the State of Georgia; that on or about the first of December, 1864, the said city of Savannah was threatened with capture by the United States forces then advancing from the city of Atlanta, in the State of Georgia, to the Atlantic coast; that the portion of the United States forces immediately threatening and advancing upon the said city were under the command of John W. Geary, a major-general in the service of the United States; that there were no forces of the revolutionary government in the said city, and the citizens and municipal authorities thereof sent out a committee, headed by the mayor, to treat with the said General Geary for the surrender of the said city; whereupon it was agreed between the said committee, acting for and on behalf of the citizens and municipal authorities of Savannah, and the said General Geary, in command of the United States forces, that the said city of Savannah should be surrendered to the United States, and that the United States authorities should respect and protect all the rights of property of private persons resident therein. And thereupon, in pursuance of said terms of surrender, military possession was taken of said city by the said General Geary and the forces under his command.

93 Your petitioner further avers that at the time of said surrender he was a citizen of and resident in the said city, and was one of the persons included in the terms of said surrender and the protection thereby stipulated for, and that the said 4,185 bales of cotton were then stored in said city; that about one month after the occupation of the said city by the United States forces, viz, on the 25th day of January, 1865, all of his said cotton was seized and taken possession of by the officers of the Quartermaster's Department; that no part of said cotton or of its proceeds was appropriated by the Army or Navy of the United States, but the same was turned over by the officer seizing it to the agents of the Treasury Department, by whom it was sold and the proceeds thereof, in pursuance of a joint resolution of Congress approved March 30th, 1868, have been covered into the Treasury of the United States.

Your petitioner further saith that at the time of the seizure of his said cotton as aforesaid it was not abandoned, and was not liable to confiscation or forfeiture under any of the acts of Congress in that case made and provided, and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; and that no proceedings for the purpose of condemning said property have ever been instituted in any court or before any tribunal, and that said cotton was never at any time the property of the so-called Confederate States or of any hostile force or organization opposing the authority of the United States.

Your petitioner avers that his said cotton having been taken possession of as aforesaid by officers of the United States, and the proceeds thereof having been appropriated and paid into the Treasury of the United States, an implied contract has arisen to make your petitioner just compensation therefor by paying him all that said cotton was reasonably worth at the time and place it was so taken from him as aforesaid; and he saith that the reasonable value thereof at such time and place was one million forty-six thousand two hundred and fifty dollars ($1,046,250).

And your petitioner further shows that if there has been a lawful and valid capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to the net proceeds thereof which have been paid into the United States Treasury, under the provisions
94 of the third section of the act of Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States;" and that such net proceeds amount to the sum of one million forty-six thousand two hundred and fifty dollars ($1,046,250).

Your petitioners further show that in pursuance of the amnesty proclamation of the President of the United States, the time for accepting the benefits of which was from time to time extended by the President of the United States until and including the month of January, 1865, that on the 6th day of January, 1865, not being included in any of the classes excepted in said proclamation, he took the oath therein prescribed and accepted all of the obligations, and he is entitled to all the benefits thereof, and having thus returned to his allegiance to the United States he has never since departed therefrom, and he has ever since obeyed all the conditions and complied with all the terms of said amnesty proclamations and the oath so taken by him under it, whereby he has become entitled to all the benefits and advantages legally accruing to him therefrom; and he is advised that no act of treason or of rebellion or of hostility or of want of adherence or allegiance to the United State' which occurred prior to his receiving such amnesty can be legally imputed to him; and relying upon the legal immunity and oblivion conferred by such amnesty as to all acts committed prior thereto, he saith that in legal intendment he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and he prays the judgment of this honorable court for the said sum of one million forty-six thousand two hundred and fifty dollars, and for such other and further relief as the nature of his case may show he is entitled to.

HUGHES, DENVER & PECK,
Solicitors for Gazaway B. Lamar.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Charles F. Peck, being duly sworn, deposeth and saith that he is the agent of the claimant named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein,
95 has been made, except as in said petition is stated; that the claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; and that he believes the facts as set forth in said petition are true.

CHARLES F. PECK.

Sworn to and subscribed before me this seventh day of May, A. D. 1869.

THOS. J. MYERS,
Notary Public.

Claimant's address: Savannah, Ga.
Claimant's solicitors: Hughes, Denver & Peck, Washington, D. C.

96 *Amended petition.—Filed April* 16, 1872.

United States Court of Claims. December term, 1868.

GAZAWAY B. LAMAR }
vs. } 3222.
THE UNITED STATES. }

To the honorable Court of Claims:

The amended petition of Gazaway B. Lamar, a citizen of the United States, respectfully represents:

That in the month of December, 1864, he was, and for a long time prior thereto had been, in possession of 4,185 bales of cotton. Of this he was the absolute owner in his own right of 3,793 bales, of which 199 bales were sea island and 3,594 were upland cotton, and that he held as a commission merchant 392 bales, on which he had made cash advances and in which, therefore, he had a special property until he sold the goods and reimbursed himself for the advances; that of the 392 bales, 256 were held on account of the estate of R. Thompson, dec'd, and 136 bales on account of Holland, of Richmond, Va., all being upland cotton; that the aggregate weight of the 4,185 bales was 2,082,500 pounds, which was stored in the city of Savannah, in the State of Georgia; that on or about the first of December, 1864, the said city of Savannah was threatened with capture by the United States forces then advancing from the city of Atlanta, in the State of Georgia, to the Atlantic coast; that the portion of the United States forces immediately threatening and advancing upon the said city were under the command of John W. Geary, a major-general in the service of the United States; that there were no forces of the revolutionary government in the said city, and the citizens and municipal authorities thereof sent out a committee, headed by the mayor, to treat with the said
97 General Geary for the surrender of the said city, whereupon it was agreed between the said committee, acting for and on behalf of the citizens and municipal authorities of Savannah, and the said General Geary,

in command of the United States forces, that the said city of Savannah should be surrendered to the United States, and that the United States authorities should respect and protect all the rights of property of private persons resident there. And thereupon, in pursuance of said terms of surrender, military possession was taken of said city by the said General Geary and the forces under his command.

Your petitioner further avers that at the time of said surrender he was a citizen of and resident in the said city, and was one of the persons included in the terms of said surrender and the protection thereby stipulated for, and that the said 4,185 bales of cotton were then stored in said city; that about one month after the occupation of the said city by the United States forces, viz, on the 25th day of January, 1865, all of his said cotton was seized and taken possession of by the officers of the Quartermaster's Department; that no part of said cotton or of its proceeds was appropriated by the Army or Navy of the United States, but the same was turned over by the officer seizing it to the agents of the Treasury Department, by whom it was sold, and the proceeds thereof, in pursuance of a joint resolution of Congress approved March 30th, 1868, have been covered into the Treasury of the United States.

Your petitioner further saith that at the time of the seizure of his said cotton as aforesaid it was not abandoned and was not liable to confiscation or forfeiture under any of the acts of Congress in that case made and provided, and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; and that no proceedings for the purpose of condemning said property have ever been instituted in any court or before any tribunal, and that said cotton was never at any time the property of the so-called Confederate States, or of any hostile force or organization opposing the authority of the United States.

Your petitioner avers that his said cotton having been taken possession of as aforesaid by officers of the United States, and the proceeds thereof having been appropriated and paid into the Treasury of the United States, an implied contract has arisen to make your petitioner just compensation therefor by paying him all that said cotton was reasonably worth at the time and place it was so taken from him as aforesaid; and he saith that
98 the reasonable value thereof at such time and place was one million forty-six thousand two hundred and fifty dollars ($1,046,250.)

And your petitioner further shows that if there has been a lawful and valid capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to the net proceeds thereof, which have been paid into the United States Treasury under the provisions of the third section of the act of Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States;" and that such net proceeds amount to the sum of one million forty-six thousand two hundred and fifty dollars ($1,046,250).

Your petitioner further show that in pursuance of the amnesty proclamation of the President of the United States, the time for accepting the benefits of which was from time to time extended by the President of the United States, until and including the month of January, 1865, that on the 6th day of January, 1865, not being included in any of the classes excepted in said proclamation, he took the oath therein prescribed and ac-

cepted all of the obligations, and he is entitled to all the benefits thereof; and having thus returned to his allegiance to the United States, he has never since departed therefrom, and he has ever since obeyed all the conditions and complied with all the terms of said amnesty proclamations and the oath so taken by him under it; whereby he has become entitled to all the benefits and advantages legally accruing to him therefrom; and he is advised that no act of treason or of rebellion or of hostility or of want of adherence or allegiance to the United States which occurred prior to his receiving such amnesty can be legally imputed to him. And relying upon the legal immunity and oblivion conferred by such amnesty as to all acts committed prior thereto, he saith that in legal intendment he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. And he prays the judgment of this honorable court for the said sum of one million forty-six thousand two hundred and fifty dollars, and for such other and further relief as the nature of his case may show he is entitled to.

HUGHES, DENVER & PECK,
Solicitors for Gazaway B. Lamar.

99 , , *ss:*

being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition; that no assignment or transfer of said claim or any part thereof or any interest therein has been made, except as in said petition is stated; that the claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as set forth in said petition are true.

Sworn to and subscribed before me this day of , A. D. 1869.

Claimant's address: Savannah, Ga.
Claimant's solicitors: Hughes, Denver & Peck, Washington, D. C.

100 *Amended petition.—Filed May 20th*, 1873.—*A. H.*

U. S. Court of Claims. December term, 1871.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

Now comes the petitioner, Gazaway B. Lamar, and files this his amended petition in lieu of and as a substitute for all other petitions and amendments thereto heretofore filed in this cause. That in the year 1865 your petitioner was the owner and in possession of 3,701 bales of cotton, of the average weight of 500 lbs. each, of which 3,275 were stored in the city of Savannah, Ga., and shortly after the occupation of that city by the military forces of the United States, in January, 1865, were seized by order of Major-General W. T. Sherman, without the consent of your petitioner and against his will; that no part of said cotton or its proceeds was appro-

priated in any way to the use of the Army or Navy of the United
101 States, but was turned over by the officers seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States; that 426 bales were seized, in the months of October, November, and December, 1865, near Tallahassee, in the State of Florida, when it was then stored by Samuel G. Cabell, Treasury agent, and subsequently shipped to New York, when it was sold by Simeon Draper, U. S. Treasury agent, and the proceeds thereof paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said lots of cotton were sold, or the expenses attending the seizure, shipment, transportation, and sale thereof, but he states on information and belief, that the net proceeds thereof which have been paid into the treasury amount to the aggregate sum of $740,000.00.

Your petitioner avers that his property having been taken possession of by the United States Government and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor,
102 by paying him all that said cotton was reasonably worth at the times and places it was so taken from him as aforesaid. And your petitioner shows that said cotton was worth, at the time and place of its seizure, the aggregate sum of one million forty-six thousand two hundred and fifty dollars, which amount he is entitled to receive from the United States under the implied contract as stated above.

Your petitioner further shows that if there had been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is nevertheless entitled to receive the net proceeds of it, amounting to the said sum of $740,000.00, under the provisions of the third section of the act of Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that some days subsequent to the capture of the city of Savannah, to wit, on the 6th day of January, in the
103 year 1865, he voluntarily took the oath prescribed by President Lincoln in his proclamation of December, 1863, and reiterated in his proclamation of March, 1864; that not being included in any of the classes excepted, he was by the terms of said proclamations restored to all his rights of property, except as to slaves, to which he was entitled as a citizen of the United States previous to his participation in the rebellion; that since his restoration to citizenship, as above set forth, that he has borne true allegiance to the Government of the United States, and that he has not aided, abetted, or given encouragement to rebellion against said Government, and that he has since kept and maintained inviolate the oath taken by him under said proclamations.

Your petitioner further shows that the seizures of his cotton at the different times and places, as herein before set forth, were all made subsequent to his resumption of allegiance to the Government of the United States
104 under the above-named proclamations of President Lincoln and upon the invitation of the general in command of the Federal forces in the city of Savannah, and in accordance with the declaration of President Lincoln in his message to Congress of December, 1864, that the door of amnesty and pardon, upon the specified terms of his proclamations

of December, 1863, and March, 1864, was still open to all who might choose to avail themselves of the opportunity to enter and be again received into the national family.

Petitioner further shows that as to 446 bales of said cotton one William W. Cheever, since deceased, was interested to the extent of one-half in the profits to be delivered from the sales of said cotton, together with other lots of cotton not referred to in this petition.

That as to 2,371 bales of said cotton the said William W. Cheever and one Charles A. L. Lamar were interested in the profits to be derived from the sales of said cotton to the extent of one-third each, together with other lots of cotton not mentioned in this petition.

That as to 256 bales of cotton claimed in this petition, it was
105 purchased and paid for by petitioner for one D. A. Martin or Robert Thompson, and was held by him to be delivered to the said Martin or Thompson upon payment of the price and charges, but such payment has never been made.

Petitioner therefore prays judgment for the sum of $1,046,250.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Gazaway B. Lamar, being duly affirmed, deposeth that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition is stated; that claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

GAZAWAY B. LAMAR.

Affirmed and subscribed to before me, a notary public in and for said district and county.

106 Witness my hand and notarial seal this 6th day of May, A. D. 1873.

[SEAL.] JOHN D. CLARK,
Notary Public.

Claimant's address is 53 William st., N. Y. City. Claimant's solicitors, J. W. Denver and C. F. Peck, 1115 Pennsylvania avenue, Washington, D. C.

107 United States Court of Claims. December term, A. D. 1877.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

Motion to dismiss the petition.

The United States, by its solicitor, comes and moves the court to dismiss the petition filed in the above-entitled cause, for the reasons following, to wit:

1st. Because the said petition does not contain sufficient averments to give this court jurisdiction to hear and determine said cause.

2d. Because it is not stated and set forth in said petition that the claimant has at all times borne true faith and allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States, as required by the 12th section of the act of Congress, to reorganize the Court of Claims, approved March 12th, 1863.

3d. Because said petition does not contain the averments required by rule No. 2 of the rules of practice adopted by the Court of Claims. Wherefore the defendant moves that the petition of the claimant on file herein be dismissed.

JOHN J. WEED,
Assistant Solicitor for the United States.

108 [1] United States Court of Claims. December term, 1872.

G. B. LAMAR
vs.
UNITED STATES. } No. 3222.

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110 [3] EVIDENCE FOR CLAIMANT.—FILED JUNE 19, 1869.

U. S. Court of Claims. December term, 1868.

G. B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

Deposition of Henry Meinhard, for claimant, taken at Savannah, Ga., on the 24th day of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Henry Meinhard; my occupation, merchant; my age is thirty-nine years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I know the claimant. I had some cotton transactions with the claimant in the fall of sixty-four. He purchased two lots of cotton from me; the two purchases amounted to 200 bales; it was purchased from me as a representative of the firm of H. Meinhard & Brother, and was paid for by the claimant; the cotton was weighed in our warehouse at the time of the transaction; it was a bona fide transaction.

Cross-examined by counsel for the United States:

I did not own any stock in the Georgia Exporting and Importing Company—not to my knowledge. I did not know the names of the purchasing agents of that company; was not brought in contact with them in business transactions. The number of bales I have mentioned in my examination-in-chief was purchased of our firm by the late Charles A. Lamar, the claimant's son, and for his father. I am positive I received exchange from Mr. Lamar, the claimant, for one lot; the exchange was on a house in Liverpool. I do not remember the name of the house, and do not know whether they were agents of the Importing & Exporting Company spoken of.

Redirect:

I had no transactions with the Georgia Importing & Exporting Com-

pany. This was a transaction in good faith with Mr. Lamar individually.

111 [4] Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

HENRY MEINHARD.

Deposition of Franc S. Perry, for claimant, taken at Savannah, Ga., on the 27th day of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Franc S. Perry; my occupation, stevedore; my age is forty-nine; my residence the past year has been in Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I know the claimant; have known him for last twelve years; was in the employ of the Southern Express Company in Savannah, up to the twenty-second day of December, 1864, and was then retained by the Adams Express Company in the same position. Some time the last of January or first of February the claimant, G. B. Lamar, come to me and pointed out some cotton, and asked if he could store it in the cellar under the express office. I sent and counted the cotton; there was thirty-two bales of Sea Island cotton. The next morning the U. S. Government agents came with negroes and took the cotton away. I saw them take it. A portion of the cotton was marked "G. B. L.," and a portion "G. B. Lamar." It was all marked in one or other of these marks.

Cross-examined by JOHN B. KERR, counsel for the United States:

I have no knowledge whatever of the mode of business adopted be the claimant in regard to cotton purchases.

My business in the express office required me to see him occasionally. Over the door of the office was C. A. L. Lamar—this was where the cotton was; the claimant did business on the corner of Drayton and Bryan streets, next door to the office of C. A. L. Lamar. So far as I remember, there was no designation over the office of claimant. My business never brought me in relation with the Georgia Importing and Exporting Company. I have heard of such a company.

(All questions in relation to the Georgia Importing and Exporting Company are objected to by John O. Ferrill, counsel for claimant.)

I don't know the names of the officers. The cotton was on the premises of the younger Lamar, and pointed out by the claimant as his cotton, and was marked in his name in initials. There was

112 [5] two boxes tobacco broken in the same room; so in the yard where the cotton was, which Mr. Lamar said I might have.

Redirect:

The reason the claimant desired to move the cotton was that the place

where it then was was insecure, the place broken open, the gate down, and soldiers passing in and out of the place, with cigars and pipes in their mouths.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

FRANC S. PERRY.

Deposition of Benj. H. Hardee for claimant, taken at Savannah on the 23d of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is B. H. Hardee; my occupation merchant; my age is thirty-four; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I know the claimant; he was not in the military service of the Confederate States, being over age; my occupation in the early part of eighteen sixty-five was a clerk under Col. Ransom, quartermaster of the United States Army, who was engaged in shipping cotton consigned to Simeon Draper, special agent of the Treasury Department; I was employed directly by Col. Ransom, acting under his orders and paid by him; I was superintending the shipping of cotton from G. B. Lamar's and Harding's press, now known Demund's "Lower Press"—the latter is Demund's. I only superintended the taking of the cotton; other parties marked, weighed, and shipped it under my direction; I took all the cotton there was in Lamar's press; think there was between five and six thousand bales; it was shipped to New York to some agent of the United States Government; the list of cotton shipped, with the number of bales, weights, and marks, and the vessels on which the same was shipped, is a correct copy of a memorandum made at the time. (Memorandum marked "Exhibit C.") The signature to the list is mine; the affidavit was made before Thomas H. Harden, notary public, C. C. (The affidavit marked "Exhibit C" and the private memorandum of witness as collated therewith
113 [6] objected to by counsel for the United States.) My orders from Col. Ransom were to pay no attention to private marks—the more it was mixed the better it was. A guard of soldiers was placed around the presses and no one allowed to enter except those employed by or connected with the Government. I knew Mr. Lamar's cotton by its being pointed out to me by the watchman who had been there for years, and who was retained by Col. Ransom; it was after the sixth day of January, sixty-five, between that and the fifteenth day of February next that Mr. Lamar's cotton was shipped; the first lot of 255 bales was marked "V. V., Q. M., U. S.," which was intended for Van Vleit, quartermaster

of New York. I know Mr. A. H. Waver; he was employed by Col. Ransom and assigned to me as a weigher; Mr. Waver is dead; I know his signature; the signature attached to Exhibit D is Mr. Waver's genuine signature. (The Exhibit D objected to by the counsel for the United States on the ground that it is an affidavit said to be taken for the purpose of perpetuating the testimony of the witness and not taken according to law, as well as for other grounds.) The exhibit marked E is in the handwriting of A. H. Waver, and the signature to Exhibit F is the genuine signature of Mr. A. H. Waver. (The Exhibits E and F objected to by counsel for the United States.) I knew Mr. Waver very well, and have every confidence in his statement.

Cross-examined by counsel for the United States:

Mr. Lamar's press was one of the largest in the city; it is the largest—has the most storage capacity. The way in which I was enabled to satisfy myself in regard to the ownership of the different lots of cotton was, that the cotton was stored separately and was pointed out to me by the watchman, and from memorandum of marks receipted from parties who had cotton stored. The memorandum of marks was furnished me by Mr. Lamar, after the seizure and prior to the shipment. There was one lot of cotton pointed out to me by the watchman in which he said W. W. Cheever was interested with Mr. Lamar, Mr. Cheever being dead; Mr. Lamar was the surviving partner; all the cotton was shipped in Mr. Lamar's name; I was in the army all the time, and beyond the fact of the existence of the Georgia Importing and Exporting Company I know nothing; we had instructions to ignore the private marks on cotton, and I have no recollection of private marks, with the exception of one lot belonging to Asher Ayers, of Macon, which I took off for personal reasons; that lot consisted of fifty-one bales, and was shipped in the name of Henry Brigham. I have no means of knowing anything in regard to Mr. Lamar's individual ownership or of his ownership as connected with the Georgia Importing and Exporting Company, except such as I have stated; I cannot speak, therefore, in regard to any cotton at this press belonging to that company, not having taken the marks, as before stated.

B. H. HARDEE.

114 [7] Second general interrogatory by the special commissioner: Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I know nothing else.

B. H. HARDEE.

EXHIBIT C.

GEORGIA, *Chatham County:*

Personally appeared before me, Benjamin H. Hardee, who, being duly sworn, deposes and says, that he was employed by Lt. Col. H. R. Ransom, of the United States Army, to weigh and ship cotton from the port of Savannah in the months of January and February, 1865, and that he took and shipped from Lamar's warehouses, in the city of Savannah, the following parcels of cotton, the marks on which were altered and new numbers

placed thereon, and the old marks and numbers were omitted by order of Col. Ransom, viz:

			Pounds.
VV.	No. 1 to 255,	255 bales cotton, per Neptune Bride	113,482
AB.	T. S. No. 120 to 201,	82 bales cotton, "	
AB.	No. 30 to 60,	31 bales sea island, per Nautily	9,421
"	No. 1 to 267,	267 bales cotton, upland, Henry Hobart	125,223
"	No. 1 to 60,	60 bales cotton, sea island, per Helen	18,639
"	No. 1 to 529,	368 bales cotton, upland, per Hovel Peacock	187,266
"	No. 1 to 506,	506 bales cotton, upland, per Belle of the Bay	257,953
"	No. 1 to 414,	414 bales cotton, upland, per Tempest	198,108
"	No. 1 to 499,	499 bales cotton, upland, per S. C. Grove	253,457
"	No. 1 to 386,	386 bales cotton, upland, per W. C. Duval	211,682
"	No. 1 to 164,	164 bales cotton, upland, per W. L. Mershon	92,430
"	No. 271 to 275,	5 bales cotton, upland, per W. L. Mershon	2,726
		3,037	

And that he was informed and believes that all of said cotton was consigned to Gen'l Van Vleit, Quartermaster-General of the United States, or to Simeon Draper, the collector of the port of New York, at the city of New York, and that the owner of the warehouses and of the cotton were forbidden to approach to the warehouses or to the cotton, or to the vessels by which it was shipped, and kept away by military guard stationed for that purpose, and they were generally denied the opportunity to identify their cotton as it was shipped.

B. H. HARDEE.

115 [8] Sworn to and subscribed before me June 12, 1866.

THO. H. HARDEN,
Not. Pub., C. C.

STATE OF GEORGIA,
Chatham County:

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in county records, book X X X, folios 489, 490, this 18th July, 1866.

WM. H. BULLOCH,
Clerk S. C. C. C.

EXHIBIT D.

GEORGIA, *Chatham County:*

Personally appeared before me, A. H. Waver, who, being duly sworn, deposes and says, that he was employed by Lt. Col. H. R. Ransom, of the United States Army, to weigh and ship cotton from the port of Savannah in the months of January and February, 1865, and that he took and shipped from Lamar's warehouses, in the city of Savannah, the following parcels of cotton, the marks on which were altered and new numbers placed thereon, and the old marks and numbers were omitted by orders of Col. Ransom, viz:

			Pounds.
FV.	No. 1 to 225,	255 bales cotton, per Neptune Bride	113,482
JS.	No. 120 to 201,	82 " " "	
AB.	No. 30 to 60,	37 " " sea island, per Nautily	9,421
"	No. 1 to 267,	267 bales cotton, upland, per Henry Hobart	125,223
"	No. 1 to 60,	60 bales cotton, sea island, per Helen	18,639
"	No. 162 to 539,	368 bales cotton, upland, per Lovel Peacock	187,266
"	No. 1 to 506,	506 bales cotton, upland, per Belle of the Bay	257,953
"	No. 1 to 414,	414 bales cotton, upland, per Tempest	198,104
"	No. 1 to 499,	499 bales cotton, upland, per S. C. Grove	253,457
"	No. 1 to 386,	386 bales cotton, upland, per W. C. Duval	211,682
"	No. 1 to 164,	164 bales cotton, upland, per W. L. Mershon	92,430
"	No. 271 to 275,	5 bales cotton, upland, per W. L. Mershon	2,726
		3,037	

And that he was informed and believes that all of said cotton was consigned to Gen'l Van Vliet, Quartermaster-General of the United
116 [9] States, or to Simeon Draper, the collector of the port of New York, at the city of New York, and that the owner of the warehouses and of the cotton were forbidden to approach to the warehouses or to the cotton, or to the vessels by which it was shipped, and kept away by military guard stationed for that purpose, and that they were generally denied all opportunity to identify their cotton as it was shipped.

And the deponent further deposes that he also shipped several hundred bales, some sea island and some upland cotton, from the stores belonging to G. B. Lamar, on Moore's wharf, and from stores of Mr. John Stoddard adjoining them, all of which were consigned to Simeon Draper, esq., New York, by order from Col. H. R. Ransom, of the United States Army, and that the said Lamar was prevented from taking any means to identify said cotton by the military authorities aforesaid.

A. H. WAVER.

Sworn and subscribed before me this 12th May, 1866.

THO. H. HARDEN,
Not. Pub., C. C.

STATE OF GEORGIA,
Chatham County:

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in county records, book X X X, folio 490, this 18th July, 1866.

WM. H. BULLOCH,
Clerk S. C. C. C.

EXHIBIT E & F.

SAVANNAH, *April* 10, 1865.

G. B. LAMAR, Esq.:

SIR: Herewith I respectfully furnish according to promise the marks and numbers of bales of cotton taken from Williamson's store, to wit:

Gale, 25 bales s. island.
D. & P., 10 "
J. K. & Bro., 92 bales up.

A No. 2.

GEORGIA, *Chatham County:*

Personally before me came and appeared A. H. Waver, who, being duly sworn, deposeth that he was employed by the military authorities of the United States in January, February, March, 1865, to take from the stores in Savannah, and to ship certain cottons by various vessels to the city of New York, and in the performance of that duty, among other cottons taken from many other stores, he took from Williamson's store—

Gale or G., 25 bales sea island cotton.

D. & P., 10 bales sea island cotton.

117 [10] J. K. & B., 92 bales upland cotton.

All of which were sent to the vessels then loading for New York, and he believes that the same was consigned to Simeon Draper, esq., in New York.

And the said A. H. Waver also deposes that the owners of said cotton and the lessees of the store were prevented by the military of the United States from attending to further shipment of cotton.

A. H. WAVER.

Sworn to before me this 13th day of June, 1867.

[SEAL.] THO. H. HARDEN,
Notary Public, Chatham County, Georgia.

Deposition of M. Loewenthall for claimant, taken at Savannah, Ga., on the 23d day of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree you are related to the claimant.

Answer. My name is M. Loewenthal; my occupation, assistant treasurer city of Savannah; my age is 41 years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRELL, the witness says:

I was in the city of Savannah in the year 1865, during the whole year. My occupation during the early part of that year was clerk in the provost-marshal's office. The provost-marshal's name was J. B. Seymour; he was a captain in the Federal Army. I presume the duty of that officer was to administer the amnesty oath to citizens, as he did administer the oath. A circular was issued, printed, calling on persons to come forward and take the amnesty oath, issued by the provost-marshal.

(Last sentence objected to by counsel for the Government.)

I have no copy of the circular. (Paper marked "Exhibit A," submitted to the witness.) I recognize the paper; it is in my handwriting. I saw the oath administered to Lamar, and saw Mr. Lamar sign it. It is signed in the blank left for his place of business. I also state that I saw Captain Seymour witness the paper, and that the name Ira B. Seymour on

said exhibit is his genuine signature. The date on the exhibit is the date he took the oath. A large number took the oath of amnesty. Can't say the number over three thousand. The names of all parties who took the oath of amnesty were registered in a book kept for that purpose in the provost-marshal's office.

Cross-examined by JOHN B. KERR, counsel for the United States:

118 [11] I was a citizen of Savannah prior to the occupation of the city by Sherman's army. My engagements by the military authorities commenced about a week or ten days after the occupation. I was acquainted with the claimant and knew his place of business. Paper marked "Exhibit A" was the general license accorded all who chose to take the oath. Those licenses were recorded in the same book where the oaths were. I know nothing of Captain Seymour or of his whereabouts now. Exhibit A is not the oath to which I refer as having been administered in my presence; that is another matter entirely.

Redirect:

Persons were required to take the amnesty oath before they could receive permission such as Exhibit A. In my direct examination, when I stated I saw Mr. Lamar sign in the blank left for the place of business, I had reference to Exhibit A, and not to the oath of allegiance; I also saw him sign the oath of allegiance.

(Objected to in the absence of the register referred to.)

Cross-examination resumed:

The claimant was president of the Georgia Exporting and Importing Company; I was a stockholder in the company, and, while I know nothing about the management of it, I was among those signing a communication to Mr. Lamar requesting some statement of the assets and concerns of the company. So far as I know no reply was ever made to that communication.

(John O. Ferrill, counsel for the claimant, objects to any question as to the claimant's status or actions, the Government alone having the right to call him as a witness in his own case. Also to the cross-examination resumed as irrelevant.)

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Ans. I do not.

M. LOEWENTHAL.

EXHIBIT A.

HEADQUARTERS POST,
PROVOST-MARSHAL'S OFFICE,
Savannah, Ga., Jan'y 6, 1865.

The undersigned, G. B. Lamar, having taken the oath of allegiance to the Government of the United States, in compliance with general order of the commander of post, has permission to open his place of business on G. B. Lamar as commission merchant.

By order of General Jno. W. Geary, commandant post.

IRA B. SEYMOUR,
Captain and Provost-Marshal.

119 [12] *Deposition of John Sullivan, for claimant, taken at Savannah, Ga., on the 24th day of February,* 1869.

Please state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is John Sullivan; my occupation is watchman; my age is fifty years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I have been a watchman at Lamar's cotton-press and warehouse since eighteen and fifty-five. During the war I had charge of both the press and warehouse. There was a large lot of cotton there in sixty-two—I could not say how much—belonging to Mr. Lamar and his son.

Q. Was there not in the neighborhood of about 500 bales of cotton brought there in the year sixty-two, marked "J. J. W." and other marks? (Objected to by counsel for United States as a leading question.)

I should judge there was about 500 bales. There was also a lot of cotton purchased from Mr. Frank Gue, marked "H. S.," I think, and stored in the warehouse. It was stored there as Mr. Lamar's cotton. That cotton was not removed until it was taken away by the yankees. All the books and papers were taken away or destroyed by the army and other parties at the time of the occupation. This lot consisted of 136 bales. I remember another lot of 90 bales of sea island cotton, marked "G. C." in a ring. It was brought by Bonn, the drayman, from the Central Railroad depot; it came from Augusta. I received that cotton in Mr. Lamar's name, and it remained there until taken away by the Federal Army.

Cross-examined by the counsel for the United States:

The Lamar cotton-press was one of the large ones in the city and one of the leading presses. There was nothing in the particular lot of cotton on which Mr. Lamar's and Mr. Cheever's names were written to enable me to designate it beyond the fact it was stored there a long time. The lot of cotton was marked "Lamar & Cheever," but not the bales. The bales were mostly marked "J. J. W." I saw no cotton there belonging to the Georgia Importing and Exporting Company. I received no cotton except in Mr. Lamar's name and that of his son, Mr. C. A. L. Lamar. I know nothing of the business relations between the father and son. The elder Mr. Lamar came from the North about the beginning of the war. The younger Mr. Lamar went to Europe during the war, but the year I do not know.

(Question and answer objected to by claimant's counsel.)

120 [13] The younger Mr. Lamar, about the time of his going to Europe, exercised no special control over the cotton—he gave me no orders beyond general caution to keep good watch. I asked him at the time he told me he was going to Europe who would pay me in his absence, and he said his father would pay me. I knew Mr. Cheever quite well; I never knew of his giving any orders in regard to cotton. He might have had something to do with the cotton. All I knew was that his name was on

that lot—the one mentioned. There was cotton pressed there during the war and sent away; I do not know when it was sent. None of Mr. Lamar's cotton was pressed and sent away to my knowledge. There was confederate cotton pressed there.

Redirect:

I turned over all the cotton in the yard to Mr. B. H. Hardee at the time of the Federal occupation, as an employee of Col. Hanson. I pointed out to Mr. Hardee Mr. Lamar's cotton and gave him the marks.

Question by the commissioner. Do you know of any other matter or thing relative to the claim in question?

A. I do not.

JOHN SULLIVAN.

Deposition of Thos. H. Hardee, for claimant, taken at Savannah, Ga., on the 23d day of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Thomas H. Hardee; my occupation insurance agent; my age is fifty-seven years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I have been a notary public for several years; I recognize the signatures to Exhibits D and F as being Mr. A. H. Waver's genuine signatures, (Exhibits D and F attached to the testimony of B. H. Hardee.) Mr. Waver brought the papers to me and swore to the truth and correctness of the same and signed them in my presence. The paper marked "Exhibit E" I know to be in the handwriting of Mr. A. H. Waver.

Cross-examined by the counsel for the United States:

To the best of my knowledge and belief the body of the Exhibit D in the handwriting of a gentleman by the name of Mr. Lawson, who
121 [14] is now here in the city. (Objected to by counsel for the claimant.) The body of Exhibit F in the handwriting of Mr. Lamar, the claimant.

(Objected to by the counsel for the claimant.)

I did not know the object of the papers; they were simply brought to me and sworn to and subscribed in my presence. There was nothing pending to my knowledge at the time.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question; if you do, state it fully.

Answer. I do not.

THOS. H. HARDEE.

Deposition of Wm. H. Bennett, for claimant, taken at Savannah, Ga., on the 23d day of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Wm. H. Bennett; my occupation clerk; my age is twenty-eight years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I know Mr. Lamar; I would take him to be about sixty years of age; my business in the year eighteen and sixty-four was collector for the Atlantic and Gulf Railroad. The list marked "Exhibit B" is transcript of the bill rendered to Mr. Lamar for freight of cotton, which amount of freight I received and receipted for as a collector of the railroad. The name appended to this exhibit is my genuine signature, sworn to before John A. Staley, justice of the peace.

Cross-examined by counsel for the United States:

I suppose the exhibit marked "B" is in Mr. Lamar's handwriting; it is his handwriting. It was an affidavit made by me at the request of Mr. Lamar at the time. The exhibit marked "B" was made from Mr. Lamar's receipt book, on which he always copied the bills when I presented them and which I signed. The books of the company were in the charge of Mr. C. H. Williams, who now occupies the same position he did in sixty-four. Exhibit B ought to be a transcript from the book of the company in due commercial routine. There was no consignment, to my knowledge, to the Georgia Exporting Company during the year sixty-four, nor at any other time. I knew of the existence of such a company
122 [15] at the time; as a matter of notoriety, I knew Mr. Lamar to be president of that company.

(Objected to by counsel for the claimant as irrelevant, all the testimony of this witness in regard to the Georgia Exporting Company.)

Q. What was the moving cause for making this affidavit in 1866 in regard to the transactions in 1864?

A. Nothing that I know of except to help a fellow-man, and at Mr. Lamar's request.

(Exhibit B objected to by counsel for the United States.)

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

W. H. BENNETT.

EXHIBIT B.

GEORGIA, *Chatham County:*

Personally before me, John A. Staley, came William H. Bennett, who, being duly sworn, deposes and saith that as collection clerk of the Atlantic

& Gulf Railroad Company, in which he was acting in the year 1864, that the said railroad company brought to the city of Savannah, consigned to G. B. Lamar, the following lots of cotton, which were delivered to said G. B. Lamar's draymen, and that he collected the freight for the said lots of cotton from the said G. B. Lamar, as follows:

May 7, 1864,	J. J. D.	7	225 bales,	111,414 lbs.,	upland cotton.	
	J. K.	95				
	K.	123				
May 12,	K.	15	15 "	7,320 lbs.	do.	
	J. K.		23 "	11,250 lbs.	do.	
	K.		34 "	23,885 lbs.	do.	
	J. K.		23 "	11,075 lbs.	do.	
	L.		32 "	14,215 lbs.	do.	
	K.		5 "	2,460 lbs.	do.	
June 4,	L.		160 "	77,495 lbs.	do.	
	K.		19 "	9,715 lbs.	do.	
	J. K.		10 "	4,990 lbs.	do.	
	L.		58 "	29,430 lbs.	do.	
June 16,	L.		4 "	2,055 lbs.	do.	
Aug. 13,	K.		34 "	17,155 lbs.	do.	
	J. K.		12 "	5,965 lbs.	do.	
	L.		41 "	21,820 lbs.	do.	
	K.		1 "	502 lbs.	do.	
Aug. 13,	G. A. C.		63 "	31,073 lbs.	do.	
	B. C.		38 "	17,900 lbs.	do.	
	B. C.		48 "	22,135 lbs.	do.	
123 [16]	G. A. C.		70 bales	35,335 lbs.,	upland cotton.	
	W. G.		15 "	5,855 lbs.	do.	
	W. T.		5 "	2,725 lbs.	do.	
	G. A. C.		34 "	17,845 lbs.	do.	
	C. C.		60 "	32,120 lbs.	do.	
	W. T.		5 "	2,390 lbs.	do.	
	B. C.		16 "	7,700 lbs.	do.	
	I.		234 "	116,119 lbs.	do.	
	L.		80 "	39,637 lbs.	do.	
	L.		15 "	7,420 lbs.	do.	
	G. A. C.		28 "	13,890 lbs.	do.	
	B. C.		5 "	2,150 lbs.	do.	
	L.		2 "	1,000 lbs.	do.	
	G. A. C.		18 "	8,830 lbs.	do.	
	K.		1 "	505 lbs.	do.	
	J. K.		2 "	994 lbs.	do.	
	G. A. C.		11 "	5,522 lbs.	do.	
	B. C.		1 "	430 lbs.	do.	
	G. A. C.		118 "	59,270 lbs.	do.	
	B. C.		9 "	4,120 lbs.	do.	
	G. A. C.		17 "	8,375 lbs.	do.	
	B. C.		13 "	6,140 lbs.	do.	
	G. A. C.		41 "	21,260 lbs.	do.	
	B. C.		11 "	5,205 lbs.	do.	
Aug. 26,	D and P.		12 "	3,974 lbs.,	S. I. cotton.	

Sept. 17, D and P.	16	"	5,273 lbs.	do.
G. A. C.	20	"	6,366 lbs.,	upland cotton.
Oct. 29, [W.]	13	"	6,480 lbs.	do.
[G.]	19	"	7,850 lbs.	do.
Nov. 10, W. T.	15	"	6,035 lbs.	do.
June 30, '64, C. C.	11	"	5,700 lbs.	do.
	1,766			

W. H. BENNETT,
Collector A. & G. R. R. Co.

Sworn to before me this 8th day of Feb'y, 1866.

JNO. A. STALEY,
Notary Public, C. C., Ga.

STATE OF GEORGIA, *Chatham County:*

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in county records, book XXX, folios 117, 118, this eighth February, A. D. 1866.

WM. H. BULLOCH,
Clerk S. C. C. C.

124 [17] *Deposition of Edward Breen, for claimant, taken at Savannah, on the 24th of February*, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Edward Breen; my occupation, lumber inspector; my age is thirty-seven years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, JOHN O. FERRILL, the witness says:

I am acquainted with the claimant. During the year 1864 I was called upon by Mr. Lamar, the claimant, to haul cotton for him. I have examined the paper marked "Exhibit G," and find the statements made therein correct. I was at time superintendent for Mr. T. A. Goodwin, drayman, and the cotton specified in the exhibit as therein specified came within my own personal observation. Mr. Goodwin hauled all the cotton and other goods for Mr. Lamar from April, 1864, to the time of the entrance into the city of General Sherman and his army. I superintended the hauling in person. After taking the cotton to places mentioned in the affidavit it was never removed by me to any other places, nor do I believe it was removed until seized by the United States Government; had it been moved I should have been likely to know it.

The introduction of Exhibit G objected to by John B. Kerr, counsel for the United States.

Cross-examined by JOHN B. KERR, counsel for the United States:

I derive my knowledge of the number of bales of cotton from examination of draymen' receipts in the possession of the claimant. Exhibit G is in the handwriting of the claimant. (The question in relation to the handwriting in Exhibit G and answer thereto objected to by counsel for claimant.) During all this time to which I have referred to I hauled no cotton for the Georgia Importing and Exporting Company; I did it all for Mr. Lamar. The orders were all given me by Mr. Lamar. I heard of the Georgia Importing and Exporting Company in the streets. I know no difference. Mr. Lamar gave me no instructions about that company at all.

Redirect:

I am satisfied that the statement in Exhibit G as to the number of bales hauled is perfectly correct. All the cotton I hauled was for claimant in his own name and paid for by him. I know nothing at all about the Georgia Importing and Exporting Company; never hauled a bale for it.

125 [18] Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

EDW. BREEN.

EXHIBIT G.

GEORGIA, *City of Savannah:*

Personally came and appeared before me, Levi S. Hart, a justice of the peace for the county of Chatham, State of Georgia, Edward Breen, who, being duly sworn, deposeth and saith that in April, 1864, he hauled J J D 7, J K 95, K 123=225 bales cotton from the Atlantic & Gulf R. Road to Lamar's press for account of G. B. Lamar, who paid the bills for hauling the same; that in May, 1864, he hauled—

K 15, J K 23=38 bales from and to the same places for said Lamar.

That in June he hauled—

K 91, J K 45, L 295=431 bales cotton from the Atlantic & Gulf R. Road to Lamar's press and warehouses; and in July and August he hauled—

G A C	226	652 bales cotton from the A. & G. Railroad to Lamar's press warehouses for account of G. B. Lamar.
C C	60	
W T	5	
B C	44	
L	314	
K	1	
J K	2	

That in August, 1864, he hauled G A C 133,=B C 86, G A C 41, B C 11, D & P 12 Sea Islands=283 bales cotton from the A. G. & R. Road depot to stores on Moore's wharf, owned by G. B. Lamar, and also S M 94 and J W M 6, 100 bales, (500,152 lbs.) from Henry Meinhard & Bro. to same stores or to those rented by G. B. Lamar of Mr. Stoddard, which were adjoining said stores on Moore's wharf, all for account of G. B. Lamar.

And also 112 bales bought in Savannah and hauled to the above stores for same account.

That in September, 1864, he hauled D and P, 16 sea island—J R H, 6 sea island—J L K, 22 sea island—G A C, 20 sea island—all from Atlantic & Gulf R. R. depot, to the same stores, except that some were hauled to stores of John Williamson, rented by said G. B. Lamar for storing the same.

That in October he hauled [W] 13, [G] 19—32 bales cotton from the Atlantic & Gulf Railroad depot to the foregoing stores, for account of said G. B. Lamar, who paid the drayage of the same.

That all of said cotton was stored in the several stores at the time it was hauled to them; he cannot define how many bales in each, but all of it was stored in them, and the deponent verily believes that all 126 [19] of said cotton remained in said stores until it was removed by the military authorities of the United States, in January, February, and March, in the year 1865. And this deponent further saith that he was daily engaged in his business superintending the drays of Mr. T. A. Goodwin, and that he never saw any of the cotton above referred to removed or taken away from said stores, as before stated, until after the entry of Gen. Sherman's army into the city; and that he verily believes that all the said cotton was in said stores at that time, and was taken off by military authorities; and further this deponent saith not.

EDW'D BREEN.

Sworn to and subscribed before me this 12th January, 1866.

[SEAL.] LEVI S. HART,
Notary Public, Savannah, Ga.

STATE OF GEORGIA,
Chatham County:

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in county records, book X X X, folios 116, 117, this 8th February, A. D. 1866.

WM. H. BULLOCH,
Clerk S. C. C. C.

Deposition of Marmaduke Hamilton, for claimant, taken at Savannah, on the 24th day of February, 1869.

Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant.

Answer. My name is Marmaduke Hamilton; my occupation, merchant; my age is thirty-nine; my residence the past year has been in Savannah, Georgia; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by counsel for the defendant, JOHN O. FERRILL, the witness says:

I know the claimant.

From the sixth day of January to the first of April, 1865, I was in

the employ of Col. Ransom, U. S. A., to receive the returns of cotton shipped, make out invoices, and attend to the business of the office generally in regard to seizure of cotton by the United States authorities. The paper marked "Exhibit H" contains a correct statement of the cotton returned in the office of Col. Ransom, U. S. A., as being the property of G. B. Lamar, the claimant, and was shipped at the time stated, and on the vessels named in said exhibit.

(Counsel for the United States objects to Exhibit H.)

Cross-examined by JOHN B. KERR, Esq., counsel for the United States:

I made out the paper marked "Exhibit H." It was made out from a copy I took from a book in the office of Col. Ransom, U. S.
127 [20] A., which book was a correct return of all the cotton seized in Savannah, with the names of the parties to whom the cotton belonged. I know nothing of the ownership of the cotton, except from the returns made to Col. Ransom. I was in service during the war, but never beyond the limits of Chatham County. For many years I have been engaged in business in Savannah. The claimant was president of the Georgia Importing and Exporting Company. I took stock in that company myself. The company did but very little business, except investing in cotton, so as to go on after the war. I have no direct knowledge as to the extent of the investments. I was one of the directors in this company, and so was A. A. Solomons and C. A. L. Lamar; I do not recollect there were others. All the knowledge I have of the cotton belonging to the company I derived from the claimant.

(All questions and answers thereto in regard to the status of the witness, and in relation to the Georgia Importing and Exporting Company, unless connected with this claim, are objected to by counsel for the claimant.)

The claimant was one of the most ardent supporters of the Confederate Government. The claimant was known to me more from reputation than any personal intimacy, and my knowledge of his political status was more from hearsay than any personal knowledge I had of him.

(The last answer objected to as hearsay by counsel for claimant.)

Redirect by counsel for claimant:

There was a large fire in Macon and Thomasville that destroyed a large amount of cotton belonging to the Georgia Importing and Exporting Company. The report of the claimant as president of the Georgia Importing and Exporting Company to the directors was that there was between three and four thousand bales burnt up.

Interrogatory by the commissioner. Do you know of any other matter relation to the claim in question? If you do, state it fully.

Ans. I do not.

M. HAMILTON.

EXHIBIT H.

List of cotton belonging to G. B. Lamar, shipped by Lt. Col. H. C. Ransom, Q. M. U. S.

1865.			
Jan. 11.	Schr. C. S. Grove, A. B., No. 1 to 499 (3 in dispute), up'd.....	499 bales, weighing..	253,457 lbs.
" 12.	Schr. H. Hobart, A. B., No. 1 to 276, up'd.	267 bales, weighing..	125,223 lbs.
" "	Schr. Neptune's Bride, V. V., Q. M. U. S. No. 1 to 255; A. B., No. 1 to 119; A.		

		B., No. 121 to 202, up'd	456 bales, weighing..	213,482 lbs.
128 [21]	Jan.	23. Schr. Nautilus, A. B., No. 20 to 50, sea island	31 bales, weighing..	,421 lbs.
"	"	25. Schr. Helene, A. B., No. 1 to 60, sea island	60 bales, weighing..	18,639 lbs.
"	"	31. Schr. Lovett Peacock, A. B., No. 162 to 529, upland	386 bales, weighing..	187,266 lbs.
Feb.		9. Brig Tempest, A. B., No. 1 to 414, upland	414 bales, weighing..	198,108 lbs.
"		13. Schr. W. C. Merschon, A. B., No. 271 to 275, upland	5 bales, weighing..	2,726 lbs.
M'ch		4. Ship L. L. Sturgess, A. B., No. 880 to 912, upland	33 bales, weighing..	14,587 lbs.
"		7. Bark Persia, A. B., No. 240 to 444, upland	205 bales, weighing..	101,953 lbs.
"		10. Ship Bazaar, A. B., No. 139 to 186, 48 548 to 638, 91 651 to 711, 61 790 to 828, 39, upland	323 bales, weighing..	160,622 lbs.
Feb.		11. Schr. W. C. Duval, A. B., No. 1 to 386, upland	386 bales, weighing .	211,465 lbs.
"		4. Brig Belle of the Bay, A. B., No. 1 to 506, upland	506 bales, weighing..	251,953 lbs.
			3,553 bales.	

129 [22, 23] In the Court of Claims.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } 3222.

Now comes the said claimant, by C. F. Peck, the solicitor in said cause, and moves that the honorable Secretary of War be requested to transmit to this court copies of papers, as follows:

So much of books marked "D" and "E," being the registration of claimants of Savannah cotton, and shipments of the same, as relates to, owned, or claimed, or shipped in the name of G. B. Lamar.

C. F. PECK,
Solicitor for Claimant.

(Indorsed:) No. 3222. U. S. Court of Claims. G. B. Lamar vs. The United States. For cotton. Motion requesting copies of papers from the War Department. Q. M. General report rec'd Oct. 20, 1871. Charles F. Peck, solicitor for claimant. Cl. B, 1127. 1871. Rec. Q. M. G. O. Oct. 10, '71. 7321. War Department. Received Oct. 5, 1871. 8102. Q. M. G. O. 1871.

WAR DEPARTMENT,
Washington City, October 24, 1871.

To the CLERK COURT OF CLAIMS:

SIR: Referring to your request of the 4th instant for certain evidence in the case of G. B. Lamar, No. 3222, vs. The United States, now pending in the Court of Claims, I am instructed by the Secretary of War to transmit the accompanying duly authenticated copies of papers furnished by the Quartermaster-General of the Army, to whom your communication was referred.

The rule of the court is returned herewith as requested.

Very respectfully, your obedient servant,

W. M. DUNN,
Ass't Judge Adv. General, U. S. A.

QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., Oct. 20th, 1871.

To the Hon. SECRETARY OF WAR, *Washington, D. C.:*

SIR: I have the honor to return herewith the request of the assistant clerk Court of Claims for evidence in the cotton case of G. B. Lamar, now pending in that court, referred to this office the 9th inst., with transcripts from books E and D, Savannah cotton, being the only evidence on file in this office pertaining to the case.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General, U. S. A.

Cl. B, 1127. 1871. 2 enclosures.

(Indorsed:) Quartermaster-General, October 20, 1871, returns request of ass't clerk Court of Claims, with certified copy of all evidence
130 [24] on file in his office in cotton case of G. B. Lamar, now pending in that court. 7321. War Dep't, 1, 187 .

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., October 20th, 1871.

I, Montgomery C. Meigs, Quartermaster-General of the Army of the United States, do hereby certify that the annexed copies, paged from one to the two, inclusive, have been made by a competent and reliable copyist from records of this office in the case of G. B. Lamar, and are believed to be accurate copies of the originals.

In testimony whereof I have hereunto set my hand and caused the seal of the office to be affixed.

[SEAL.] M. C. MEIGS,
Quartermaster-General, Brevet Major-General, U. S. Army.

WAR DEPARTMENT,
Washington, D. C., October, 1871.

I, William W. Belknap, Secretary of War, do hereby certify that, at the time of signing the foregoing certificate, Montgomery C. Meigs was Quartermaster-General of the Army of the United States, and that the signature thereto purporting to be his is genuine.

In testimony whereof I have hereunto set my hand and caused the seal of the War Department to be affixed.

[SEAL.] WM. W. BELKNAP,
Secretary of War.

Transcript from book E.—Statement of captured cotton shipped from Savannah, with names of clain ants.

G. B. LAMAR.

Date of receipt.	Marks.	Up.	S. I.	Date of receipt.	Marks.	Up.	S. I.
1865.							
Jan'y 19	Sch'r Henry Hobart		A. B.		267 bales upland.		
" "	" Neptune's Bride		V. V. Q. M. U. S.		255 do. do.		
" "	" do.		A. B.		201 do. do.		
" 24	" Nautilus		do.		31 do. sea island		
" 26	" Helene		do.		60 do. do.		
Feb'y 4	Brig Belle of the Bay		do.		506 do. upland.		
" 9	" Tempest		do.		414 do. do.		
" 11	Sch'r C. S. Grove		do.		499 do. do.		
" 13	" W. C. Davall		do.		486 do. do.		
" 21	" W. C. Merschon		do.		5 do. do.		
M'ch 3	Ship L. L. Sturges		do.		33 do. do.		
" 7	Bark Persia		do.		205 do. do.		
" 16	Ship Bazaar		do.		323 do. do.		
Jan'y 31	Sch'r Lovett Peacock		do.		368 do. do.		

Official extract.

J. D. BINGHAM,
Quartermaster, U. S. A.

Q'RM'R GEN'L'S OFFICE, *Oct. 20th*, 1871.

131 [25] *Transcript from book D.—Registration of claimants of captured cotton at Savannah, Georgia.*

Date.	Names.	Marks.	Bales.	Quality.	Where stored.	Date taken from store.	Quality.	Bales.	Remarks.
1865.									
Jan'y 27	G. B. Lamar, sq. bales	G. B. Lamar.	25	S. I.	Corner Bay Lane & Drayton st'.				25, 25
27	G. B. Lamar, joint ac. with C. A. L. Lamar.	Lamar	50	Up.	Central Railroad depot.			50	50

Official extract.

J. D. BINGHAM,
Quartermaster U. S. A.

Q'RM'R GEN'L'S OFFICE, *Oct. 20th*, 1871.

(Indorsed:) 3222. Gazaway B. Lamar vs. The U. S. Reply of War Dep't. Filed Oct. 25, 1871. J. R. 7321. War Dep't. 2. 187 .

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES. } 3222.

The deposition of Henry Meinhard, for claimant, taken at Savannah, Georgia, on the 13th day of March, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the

subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is Henry Meinhard; my occupation, merchant; my age is forty-two years; my residence the past year has been in the city of Savannah. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, the witness says:

I have given my testimony already in this case. I stated in my former testimony I remembered having sold two lots of cotton to C. A. L. Lamar. One lot of over one hundred bales—I have forgotten how many over—was paid for by G. B. Lamar, in exchange; both lots were paid for in exchange. The second lot was sold to C. A. L. Lamar, but he said at the time that it was purchased for his father, the claimant. This cotton was hauled from my warehouse by the superintendent of Mr. Goodwin's drays, Mr. Edward Breen, I think. Lamar, the claimant, sent for the cotton, but I do not know where it was carried. I remember that it was the second lot that contained over one hundred bales, and was paid for by C. A. L. Lamar.

Cross-examined by ANDREW SLOAN, Esq., attorney for the United States:

The cotton referred to was sold in 1862 or 1863, in the city of Savannah. I do not remember on whom the bills of exchange were drawn. I think the claimant was the drawee of the bills, but on whom drawn
132 [26] do not know. I do not know that this cotton constitutes any portion of the claim of Mr. Lamar. I am positive that the claimant was the purchaser of the cotton specified.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

HENRY MEINHARD.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES. } 3222.

The deposition of William Wade, for claimant, taken at Savannah, Georgia, on the 13th of March, 1872.

First general interrogatory by the commissioner. Please to state your your name, occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is William Wade; my occupation, superintendent of United Hydraulic cotton presses; my age is thirty-nine years; my residence the past year has been in the city of Savannah. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, the witness says:

Ever since June, 1865, I have been in the same business in which I am now engaged.

Question. In January, 1865, or any time, within your knowledge, between that and the middle of the year, or during that year, what was it worth, according to the usual rates, to find new bagging, rope, and twine for old bales of cotton?

(Counsel for the United States objects to the foregoing question on account of irrelevancy.)

Answer. To put cotton in general good order, which includes as much new bagging as required to cover cotton, replacing decayed rope and twine to sew up heads, one dollar and fifty cents per bale. To recover entirely with new bagging, furnish six new ropes, and twine to sew up heads, three dollars and fifty cents per bale. The cost of compressing was one dollar per bale. There should be allowed to the press alone, out of this amount, seventy-five cents per bale. The other twenty-five cents went to pay for the labor.

Cross-examined by ANDREW SLOAN, attorney for the United States:

I do not know what the actual cost was of repacking and compressing any of the cotton in this claim.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

WM. WADE.

133 [27] United States Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES } No. 3222.

ADDITIONAL EVIDENCE FOR CLAIMANT.

The deposition of John Stoddard, for claimant, taken at Savannah, Georgia, on the 11th day of March, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is John Stoddard; my occupation, gentleman; my age is sixty-three years; my residence the past year has been in the city of Savannah. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, the witness says:

I have been the owner, until recently, of real estate in this city. I rented four stores, in 1859, to the name of Lamar, in Stoddard's upper range. I do not know whether the stores were rented then to G. B.

day they were taking the cotton. He was ordered off by the military authorities, and afterwards denied access to the warehouses. The cotton of Lamar & Cheever and of Lamar were kept separate. All the cotton in the warehouses was removed by the Government, not a bale being left. Besides the four thousand bales mentioned as belonging to the Lamars, I think there were about three hundred bales in the warehouses belonging to other persons that was taken at the same time. I was sent for to deliver the cotton, and I pointed out the several lots to the parties making the seizure.

Cross-examined by ANDREW SLOAN, Esq., attorney for the United States:

I was private watchman at these warehouses; had charge of both, day and night. These warehouses were situated away down below the gas-house, at what is called the eastern wharf. They are not adjoining Mr. Stoddard's property. I do not know whether they belong to Charlie Lamar, or to his father, the claimant. It was part of my duty to receive the cotton and store it in these two warehouses. There was another man by the name of Mr. Wylly there. He was there for several months; can't say how many. There were about four thousand bales in all belonging to the Lamars, but I cannot tell how many belonged to G. B. Lamar, how many to C. A. L. Lamar, how many to Lamar and Cheever, or others, but there was about four thousand bales in all, belonging to the Lamars and Cheever. I cannot say how many bales were in the pile pointed out by me as G. B. Lamar's.

136 [30] Question. How many bales of cotton did you deliver from the two warehouses, all told?

Answer. I cannot tell.

Question. How many bales did you deliver that belonged to G. B. Lamar?

Answer. I cannot tell.

Question. How many did you deliver belonging to C. A. L. Lamar, how many belonging to Lamar and Cheever, and how many belonging to Aaron Wilbur?

Answer. I do not know.

Question. How near full were the two warehouses?

Answer. I cannot tell you.

Question. How much more cotton would they have held had they been full?

Answer. I do not know.

Question. Did C. A. L. Lamar have anything to do with G. B. Lamar's cotton?

Answer. I know nothing about it. I do not know whether they were jointly interested in the cotton or not.

Question. Do you know, of your own knowledge, that any of this cotton belonged to G. B. Lamar at the time it was seized?

Answer. I do not.

Redirect:

My testimony has reference only to the cotton stored in warehouses in the eastern part of the city. I know nothing about other cotton.

Second general interrogatory by the commissioner. Do you know of

any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

JOHN SULLIVAN.

G. B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

The deposition of H. F. Durant, for claimant, taken at Boston, Massachusetts, on the 11th day of March, 1872.

I am a lawyer, fifty years of age, and resident in the city of Boston; I have no interest, direct or indirect, in the claim which is the subject of inquiry; I am in no way or degree related to the claimant, except that his wife, who is dead, was a sister of my wife's mother. In March, 1865, I went to Savannah for the purpose of obtaining from Mr. G. B. Lamar, some valuable papers which he held, belonging to Mrs. John Fowle, my wife's mother; I found that all his papers had been taken possession of by Mr. Albert H. Browne, United States Treasury agent at Savannah, and it became necessary for me to obtain an order for the surrender of these papers to Mr. Lamar, so that I could obtain Mrs. Fowle's papers. This occupied, according to my recollection, two or three weeks, and I obtained finally from General Gillmore, who was the commander of that department, stationed at Hilton Head, the order for the restoration of all Mr.
137 [31] Lamar's books and papers to him. During these proceedings it became necessary for me to obtain a copy of Mr. Lamar's amnesty oath, and I went to the office of the provost marshal in Savanah, examined the original amnesty oath, which was on file there, and made an exact copy of it; I also examined the original register of amnesty oaths, and found this oath duly registered there, on page 220 of the register; I also examined the duplicate original of the oath, which was in the possession of G. B. Lamar, and compared it with my copy of the original; I was then familiar with the handwriting of Mr. Lamar, and saw that the signatures to the original and to the duplicate original, were in his handwriting; I have now, in my hand, the copy which I made, and compared as above stated, with a cirtificate at the bottom, made and signed by myself, which is true. I annex hereto a copy, made by the commissioner, of the oath and certificate. The original copy is identified by the signature of the commissioner, and the date, March 11, 1872. The copy made by me was made in the provost marshal's office at Savannah. I was familiar with that office; I was obliged to be there several times to obtain my passes to and from Hilton Head, and knew most of the officers.

Cross-examination conducted by THOMAS H. TALBOT, Esquire, of counsel for the United States:

Cross-interrogatory 1. Can you state more definitely the date of your visit to Savannah?

Answer. I cannot here, although probably I could find the date when I left New York, and the date of my return. It was about the first of March that I started; I returned probably in March. My recollection is that I was in Savannah about three weeks.

Cross-interrogatory 2. Did the papers, which you went to obtain, relate in any way to cotton owned or claimed by Mr. Lamar?

Answer. They did not; they were simply private papers of Mrs. Fowle's—State bonds and certificates of stock that he had held as her agent.

Cross-interrogatory 3. Did you bring the copy of the oath which you here exhibit, away with you from Savannah?

Answer. I did, and retained it until about a year ago, perhaps eighteen months ago, when Mr. Lamar borrowed it, and kept it until last week, when he enclosed it to me in a letter, and notified me that my deposition would be wanted to prove it.

The witness then states: I know of no other matter relative to the claim in question.

HENRY F. DURANT.

Copy mentioned by the deponent as made by the commissioner.—(*Francis W. Palfrey, comm'r C't Claims, March* 11, 1872.)

UNITED STATES OF AMERICA:

I, G. B. Lamar, of the county of Chatham, State of Georgia, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the Union of the States thereunder, and that I will, in like manner, abide by and faithfully support all acts of Congress, passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court, [*and that I will, in like manner, abide by and faithfully support all decisions of the Supreme Court,] and that
138 [32] I will, in like manner, abide by and faithfully support all proclamations of the President, made during the existing rebellion having reference to slaves, so long and so far as not modified and declared void by decision of the Supreme Court. So help me God.

G. B. LAMAR.

Subscribed and sworn to before me, at Savannah, Ga., this 6 day of Janu'y, A. D. 1865.

IRA B SEYMOUR,
Captain and Post [L't Col. 75th N. Y. V. V. and] *Provost Marshal.*

The above-named has light complexion, gray hair, and blue eyes; is 5 feet 7 inches high; aged 66 years, and, by profession, a commission merchant.

[Entered rebel service 18 Reg't. Resides . Entitled to provisions of Special Order No. 22. Headquarters Armies of the United States, Aug. 23, 1864.]

Corner Broughton & Habersham, Savannah, March 17, 1865.

The above is a true copy of Mr. G. B. Lamar's oath of allegiance, on file in the provost marshal's office, in Savannah, examined and compared

*Portions inclosed in brackets [ ] erased.

by me. I also saw the register of the oath, in page 220 of the register. I have also this day compared the copy with the duplicate original in the possession of G. B. Lamar. It is a true copy except that the words underneath, "corner Broughton & Habersham," are not upon Mr. Lamar's oath, but are upon the one in provost marshal's office.

HENRY F. DURANT.

(Endorsed:) H. F. Durant's certificate of G. B. Lamar's amnesty oath, March 17th, 1865.

139 [33] In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

The deposition of Alexander Hardee, for claimant, taken at Savannah, Georgia, on the 11th day of March, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant.

Answer. My name is Alexander Hardee; my occupation, clerk; my age is thirty years; my residence the past year has been in the city of Savannah, Ga. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, the witness says:

I have not already given testimony in this case. I was employed by Mr. Lamar, in 1863 and 1864, to ship his cotton from Southwestern Georgia, and was in his employ up to the time of the occupation of Savannah by the Federal Army. These shipments were made from Thomasville and Quitman and other points on the line of the Atlanta and Georgia Railroad. I was in Savannah about once a month, when Mr. Lamar would give me the receipt of the holders of such cotton, and acting as the agent of Mr. Lamar. I was a slave, belonging to W. A. Hardee & Co., but hired by them to Mr. Lamar as a cotton shipper. In 1864 I shipped cotton to Mr. Lamar from B. W. Bellaney, Jefferson County, Florida; Mr. Grover, at Groversville, Ga.; some from Simpkins, also of Jefferson County, Fla.; some from McGuiness and John P. Coles, of Tallahassee, Fla.; some from R. R. Evans, of Thomasville; from Miller & Parromore, James E. Young, and McIntosh, of Quitman, Ga. This cotton was shipped to Mr. Lamar in his own name. I do not know what became of this cotton after it reached Savannah. I can swear from my own recollection that I shipped in 1864 twelve or thirteen hundred bales of cotton. I do not know that this cotton forms any part of the basis of this claim. I know of my own knowledge that Mr. Cheever purchased this cotton for Mr. Lamar. I was present and saw it. Never shipped any cotton for Lamar & Cheever. Upon presentation of the receipt they were delivered to me as the agent of the claimant. I would then ship the cotton by the

Atlanta and Georgia Railroad to Mr. G. B. Lamar, the claimant, at Savannah. In the year 1864 there was shipped by me to him twelve or thirteen hundred bales as above stated. The cotton had been frequently lying out so long that the marks were obliterated, or nearly so. All that I could not make out the marks on I remarked with the letter L. Under this mark I shipped the cotton to the claimant. I knew Mr. W. W. Cheever—he was in the employ of Mr. Lamar at the same time as a purchaser of cotton. All this cotton that I have mentioned, purchased prior to July, 1863, had been purchased by Mr. Cheever as the agent of Lamar, the claimant, and delivered to me as Lamar's agent. Mr. Cheever died in the latter part of the year 1864. Some of this cotton which I shipped had been lying at the stations so long that the bagging was rotted from it.

140 [34] Cross-examined by A. SLOAN, Esq., attorney for the United States:

During the time I was shipping I shipped two hundred and fifty bales from Groover marked, ◇D.M◇. I shipped from him another time about six hundred bales, marked "Waverly" and "W. B. B." Groover was the principal man. I built two warehouses; one on either side of the road where the cotton was stored.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

ALEX'R HARDEE.

United States Court of Claims.

G. B. LAMAR *vs.* UNITED STATES. } No. 3222.

The deposition of Joseph Ehlen, for claimant, taken at Savannah, Georgia, on the 11th day of March, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant.

Answer. My name is Joseph Ehlen; my occupation, cotton shipper; my age is thirty-nine; my residence the past year has been in the city of Savannah. I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, the witness says:

I was employed by Colonel Ransom, of the United States Army, to take charge of the removal of cotton for shipment to New York, during the military occupation of Savannah by the army under General Sherman, in the latter part of 1864 and early part of 1865. I was one of the chief clerks, and was charged with the seizure of cotton. To the subordinate clerks was left the marking, weighing, and invoicing of the cotton. These

seizures were made up to and including April, 1865. One of the clerks under me was named A. H. Waver. He is now deceased. I do not remember how many bales of cotton were taken from Stoddard's store, next to Lamar's wharf. I think, however, the stores were pretty well filled with cotton, and the cotton was taken, I think, by A. H. Waver. Waver, and all the subordinate clerks engaged in moving cotton, reported to me. I do not know who he reported to me as the claimant of the cotton. Waver was one of the clerks employed by Colonel Ransom. Without my book, which contains a transcript of these transactions, I cannot give any information as to the quantity of cotton taken, or the claimant, or the places whence removed. I know Mr. G. B. Lamar, the claimant, was not present at the cotton seizure, for the reason that he was prohibited by a special order from being present. This was a military order, and enforced by a guard. The book referred to is not in my possession, and I do

141 [35] not know where it is to be found. From my recollection of the books in Colonel Ransom's office, I think Mr. Lamar claimed several thousand bales. I know, of my own knowledge, that Mr. Lamar had several thousand bales, but the bulk of it was at the lower press—which was not under my charge.

(Counsel for the United States enters a general objection against all the foregoing testimony that is not within the witness's own knowledge.)

Cross-examined by ANDREW SLOAN, Esq., attorney for the United States:

I know, from general observation and reputation, that Mr. Lamar had several thousand bales. I do not know that Mr. Lamar owned this cotton in his own right. It is too long for me to recollect or approximate the number of bales turned out from Stoddard's warehouses.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

JOS. EHLEN.

142 [36, 37] United States Court of Claims.

G. B. LAMAR
against
THE UNITED STATES. } No. 3222.

The deposition of Joseph Ehlen, for claimant, taken at Washington, D. C., on the tenth day of April, 1872.

First general interrogatory by the commissioner. Please to state your name, age, residence, during the past year; your occupation, and whether you have any interest, direct or indirect, in the claim which is the subject of inquiry in this suit, and whether, and in what degree, you are related to the claimant.

Answer. My name is Joseph Ehlen; my age is 39; my occupation is shipping cotton; my residence the past year has been Savannah, Georgia. I have no interest, direct nor indirect, in the claim which is the subject of inquiry in this suit, and I am in no degree related to the claimant.

Examined by JAMES W. DENVER, counsel for claimant:

Question. Have you been examined with reference to this case before?

Answer. Yes, sir.

Question. You stated in your former examination that you were one of the clerks employed by Colonel Ransom, United States Army, to attend to the seizure and shipment of cotton.

Answer. To the removal of cotton from the warehouses and the shipping of it.

Question. State if you can, what cotton you shipped that belonged to or was claimed by Mr. Lamar.

Answer. According to my book, I removed from Williamson's building (John Foley was my shipping-clerk), on the 2d of March, 1865, 92 bales of upland cotton and 35 bales of sea island cotton. The claimant was not known to me at the time. On the 2d of March, 1865, I removed from Stoddard's building, under Battersby's office (A. H. Waver, shipping-clerk), 112 bales of upland cotton, and two crates of loose cotton. The claimant for this cotton I do not know. I removed, also, from Stoddard's building, by the assistance of A. H. Waver, shipping-clerk, the following cotton, of which G. B. Lamar was the claimant: March 3d, 1865, 183 bales of upland cotton, 12 bales sea island cotton; March 4th, 180 bales of upland cotton; March 6th, 29 bales of upland cotton; March 9th, 85 bales of upland cotton and 10 bales of sea island cotton; March 11th, 11 bales of upland cotton and 64 bales of sea island cotton—making a total of 488 bales of upland cotton, 68 bales sea island cotton, and also 19 crates of loose cotton. Out of the warehouses near the Exchange dock I removed (same shipping clerk—A. H. Waver), of which G. B. Lamar was the claimant, March 10th, 111 bales of upland and five bales of sea island cotton. That is all the cotton I removed for Mr. Lamar that I know of.

Question. You mention some cotton the owner or claimant of which was not known at the time—have you since ascertained who the owner was?

Answer. No, sir. I have not since ascertained. I have heard it rumored that it was Mr. Lamar's cotton, but I do not know certainly.

Question. What became of this cotton?

Answer. It was drayed from the warehouse to the Central
143 [38] press, marked with the Government mark, weighed, repressed, and shipped. The destination was, I believe, New York or Staten Island—I do not know which.

Question. State where you obtained the dates and numbers of bales that you have given.

Answer. I kept a record from day to day of all the cotton that I removed.

Question. Where is that record now?

Answer. It is here right before me. I made this copy from which I have testified from this book.

(The copy referred to was here placed in evidence, marked by the commissioner "Exhibit A," and is appended to this deposition.)

Question. If you can describe the building exactly from which this cotton was taken you may do so.

Answer. The building out of which I took the 111 bales of upland cotton and five bales of sea island cotton was situated right between the

Exchange dock and Drayton street. There were four stores there. The corner building belonged to Colonel Lamar, and is now Kelly's building. The next warehouse is Stoddard's building, out of which I took 112 bales of upland cotton and 488 bales of upland cotton, and two crates of loose cotton, and 19 crates of loose cotton. Williamson's building, out of which I took cotton, the claimant of which was unknown to me, is on the Bay and River street, near Dumond's upper press. I have here a diagram which shows exactly the positions of these various buildings.

(The diagram referred to was here placed in evidence, and marked by the commissioner "Exhibit B," and is appended to this deposition.)

Question. In all of these operations were you acting under the order of Lieutenant-Colonel Ransom, United States quartermaster?

Answer. Yes, sir.

Question. What was the date of that order?

Answer. Savannah, February 6th, 1865.

Question. If you have the original order before you, you may give the exact words.

Answer. They are:

SAVANNAH, *Feb.* 6, 1865.

"Guards will permit Mr. Joseph Ehlan, in my employment, to remove cotton from any building in Savannah to the cotton-press on the wharf.

(Signed) "H. C. RANSOM,
"*Lt. Col. & Q. M. U. S. A.*"

Cross-examination by ALEXANDER JOHNSTON, counsel for the United States:

Question. Have you any personal knowledge as to the ownership of any of this cotton?

Answer. I have no personal knowledge. I can only state what was reported to me.

Question. Did you personally superintend the removal of any of this cotton?

Answer. Yes, sir.

Question. Did you of all of it?

Answer. I sent by the shipping-clerk, and several times during the day I went to the warehouses and saw how the shipping-clerk did his duty. I had a clerk on the wharf to receive all of the cotton, and all the accounts of the shipping-clerk and the clerk of the wharf had to tally.

144 [39] Question. Where has this book of yours been since you were examined as a witness in this case before?

Answer. I do not know where it was. I gave it to Mr. C. F. Peck shortly after the cotton was shipped from Savannah.

Question. When did you again come into possession of it?

Answer. To-day.

Question. Do you know whether or not Mr. Lamar had possession of cotton that did not belong to him?

Answer. No, sir.

Question. Do you know anything about the Georgia Importing and Exporting Company?

Answer. Yes, sir; I have heard of it often.

Question. Do you know whether that company owned any cotton in Savannah?

Answer. Not to my knowledge.

Redirect examination by Mr. DENVER:

Question. Is the book from which you quote all in your own handwriting?

Answer. Yes; all in my own handwriting.

Question. And it is the same you kept while attending to the shipments you have described?

Answer. It is the same book.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. I do not.

JOS. EHLEN.

Ex. A.

John Foley, shipp'g-clerk (book, fol. 8), Williamson's building. Claimant unknown. Ex A.

1865. March 2. 92 b. upl'd; 35 b. sea isl'd.

A. H. Waver, shipp'g-clerk (book, fol. 11), Stoddard's building, under Battersby's office.

1865. March 2. 112 b. upl'd; 2 crates loose cotton.

A. H. Waver, shipp'g-clerk (book, fol. 11), Stoddard's building. G. B. Lamar, claimant.

1865. March 3.	183 b. upl'd;	12 b. sea isl'd.	
4.	180 " "		
6.	29 " "		
9.	85 " "	10 b. sea isl'd.	
11.	11 " "	64 " " "	
	488 b. upl'd;	86 b. sea isl'd;	19 crates loose cotton.

A. H. Waver, shipp'g-clerk (book, fol. 22), near Exchange dock. G. B. Lamar, claimant.

1865. March 10. 111 b. upl'd; 5 b. sea isl'd.

145 [40] Ex't B.

Exchange dock.

The second story level with bluff.		Lamar or Moore's wharf stores.
	Lamar rented from Battersby his 4th story.	River.
	W'm Stoddard.	Wharf.
	Ditto.	Stoddard's upper buildings.

Drayton street.

United States Court of claims.

G. B. LAMAR
against
THE UNITED STATES. } No. 3222.

The deposition of A. S. Lawson, for the claimant, taken at Washington, D. C., April 9, 1872.

First general interrogatory by the commissioner. Please to state
146 [41] your name, age, residence during the past year, your occupation, and whether you have any interest, direct or indirect, in the claim which is the subject of inquiry in this suit, and whether, and in what degree, you are related to the claimant.

Answer. My name is A. S. Lawson; my age is 45; I am a book-keeper by profession; my residence the past year has been New York; I have no interest, direct nor indirect, in the claim which is the subject of inquiry in this suit, and I am in no degree related to the claimant.

Examination by J. W. DENVER, Esq., counsel for claimant:

Question. Are you acquainted with the claimant, G. B. Lamar?

Answer. I am.

Question. How long have you known him?

Answer. Since 1860.

Question. How and where you occupied in the years 1862 and 1863?

Answer. I was a book-keeper during these years for the Bank of Commerce, Savannah, Georgia, and also book-keeper for the claimant during the same time.

Question. Who was president of that bank?

Answer. G. B. Lamar, the claimant.

Question. During what period of time was he president?

Answer. He was president during all the time I was employed there.

Question. Did he keep his individual account there, and were you familiar with that?

Answer. He kept a large personal account there, and I was quite familiar with it.

Question. State whether his transactions on his individual account with the bank were large or small and what was the character of them.

Answer. His operations with the bank were large in their extent; they were principally drafts on the bank for the payment of cotton purchased by his agent, William W. Cheever.

Question. Was the claimant a man of large property at the time?

Answer. Yes, sir.

Question. Did you know W. W. Cheever and Charles A. L. Lamar?

Answer. I knew them both intimately.

Question. What has become of them?

Answer. They are both dead.

Question. Did you ever know of any business transactions between the claimant, Mr. Lamar, and Mr. Cheever? And, if so, state what they were.

Answer. I know that Mr. Lamar employed Mr. Cheever to go to Florida and purchase cotton, and that Mr. Lamar supplied him with money for that purpose. Mr. Cheever furnished invoices for the cotton so purchased, and for which his account got regular credit.

Question. State, if you know, what the arrangement was between the claimant, Mr. Lamar, and Mr. Cheever in these cotton transactions.

Answer. My understanding was that Mr. Lamar furnished all the money, and Mr. Cheever, for his services in purchasing the cotton, was to receive one-third the profits, if any.

Question. Who paid the expenses?

Answer. G. B. Lamar, the claimant, paid the traveling expenses.

Question. Were the purchases, to which you allude as having been invoiced, made for Mr. Lamar or the bank?

Answer. For G. B. Lamar.

Question. Are you familiar with the handwriting of W. W. Cheever and C. A. L. Lamar?

147 [42] Answer. I know the handwriting of both of them very well. During a part of 1860 and 1861 I was book-keeper for C. A. L. Lamar also.

Question. Here are seven exhibits, marked from "A" to "G" inclusive; look at them and state what they are and what you know of them.

Answer. These are invoices by E. Remington & Son, and for cotton purchased by him on account of G. B. Lamar; Exhibit G is an account-current of the same parties in reference to the same invoices.

(The exhibits referred to were placed in evidence, and are appended to this deposition.)

Question. Look at the paper now shown you, marked "Exhibit H," and state what it is, and whether you are able to identify it.

Answer. This is the account of Young, Woods and Gardner; I recognize it as a paper which passed through my hands in the course of business.

(The paper referred to was placed in evidence, and is appended to this deposition.)

Question. Look at the paper now presented to you and state what it is.

Answer. This is a statement of account by W. W. Cheever showing how he has expended certain moneys in reference to the purchase of cotton for G. B. Lamar, and also the money he had received from Mr. Lamar on the same account. The paper is all in the handwriting of Mr. Cheever.

(The paper referred to was placed in evidence, marked by the commissioner "Exhibit I," and appended to this deposition.)

Question. Look at the paper now handed to you and state what it is.

Answer. These are copies of receipts and extracts of receipts I made from Mr. Lamar's receipt-book this morning; they embrace receipts from Mr. Cheever for moneys, receipts from the Savannah, Albany and Gulf Railroad Company for freight paid them for cotton delivered in Savannah; also receipts from the Central Railroad Company for freight on cotton delivered by them. There is also a receipt from a planter for $2,000, received on account of his cotton crop, and receipts for storage paid by G. B. Lamar to parties in Savannah.

(The paper referred to was placed in evidence, marked by the commissioner "Exhibit K," and appended to this deposition.

Counsel for the United States objects to the reception of Exhibit K in evidence, and to all statements of the witness as to its contents.)

Question. Look at the paper now shown you and state whether you identify it.

Answer. I recognize that as a voucher that has passed through my hands.

(The paper referred to was placed in evidence, marked by the commissioner "Exhibit L," and appended to this deposition.)

Question. What has become of Mr. Lamar's books?

Answer. His cotton books are in the Treasury Department.

Question. Have you seen them lately?

Answer. I saw them yesterday morning.

Question. Are they the same you had in your possession and under your charge in Savannah in 1862 and 1863?

Answer. They are the same books.

Question. State, if you can, the amount of cotton owned by the claimant, G. B. Lamar, at the time of the capture of Savannah by General Sherman's army, and where it was stored.

Answer. I cannot state that exactly, because I was not there at that time.

Question. At what time did you leave Savannah?

148 [43] Answer. I left there in November, 1863.

Question. How many bales of cotton had Mr. Cheever bought for Mr. Lamar before you left?

Answer. Five thousand seven hundred and sixty-eight (5,768) altogether.

Question. And of that quantity how much did he have in his possession at the time you left?

Answer. I understood it was all in his possession at that time; that is, subject to Mr. Lamar's order.

Question. Do you know where any of it was stored?

Answer. It was stored in Florida and Southwestern Georgia, principally.

Question. Was any of it stored in Savannah?

Answer. I do not know. I am not familiar with the storage of it. I did not attend to that part of the business.

Question. State, if you can, who furnished the money for the purchase of that cotton.

Answer. G. B. Lamar furnished the money.

Question. Did the invoices and bills of sale, as well as the drafts for the money in payment of the same, pass through your hands and come under your supervision?

Answer. They all passed through my hands in my capacity as bookkeeper for Mr. Lamar.

Question. You stated, I believe, that Mr. Cheever was the agent of Mr. Lamar in making these purchases?

Answer. Yes, sir.

Question. You were not in Savannah at or soon after its capture by General Sherman's army?

Answer. I have been there twice since that time. I was there in 1866,

and also in 1868. I was not there for over a year after the capture of the city.

Question. Do you know about the purchase of a lot of cotton with which a Mr. Martin was connected?

Answer. I recollect that Mr. Cheever bought cotton for Captain D. A. Martin.

Question. State, if you can, how Mr. Lamar was concerned in that.

Answer. The cotton was purchased for Martin's account, but the money paid for it by Mr. Cheever was charged up in Cheever's account to G. B. Lamar. I understood that Martin was then to pay Lamar for the cotton, but Mr. Lamar was to hold the cotton until it was paid for.

Question. Do you remember how much there was of it?

Answer. I do not remember the full quantity. I find by the books in the Treasury Department that one hundred and twenty-four (124) bales are there entered as constituting this Martin transaction.

(Counsel for the United States objects to the latter statement of the witness as to what he found in the Treasury Department.)

Question. Have you given these books in the Treasury Department a careful examination since you have been here within the past few days?

Answer. I examined them carefully yesterday morning as to the number of bales belong to Mr. Lamar, according to the entries in these books.

Question. State what they show.

(Question objected to by counsel for the United States.)

Answer. They show the number of bales I have previously stated, 5,768, on account of G. B. Lamar.

149 [44] Question. You know nothing of Mr. Lamar's transactions after you left as book-keeper for the bank and for Mr. Lamar?

Answer. No, sir; not in reference to this cotton.

Cross-examination by ALEXANDER JOHNSTON, Esq., counsel for the United States:

Question. Did Mr. Lamar export any cotton during the war?

Answer. No; not to my knowledge; not during the period I was there.

Question. Was he engaged in that line of business?

Answer. No, not to my knowledge.

Question. Do you know anything of the Georgia Importing and Exporting Company?

Answer. I know that Mr. Lamar was president of such a company.

Question. What was their business?

Answer. Their object was to export cotton and to import articles of merchandise.

Question. When was that company organized?

Answer. I think in 1862. I am not positive whether it was 1862 or 1863.

Question. Had it gone into successful operation before you left Savannah?

Answer. A good deal of the capital stock had been paid in and expended in the purchase of cotton, but none of the cotton had left the country when I was there.

Question. Do you know anything about these purchases by the Rem-

ingtons, except from seeing the papers which have been offered here as exhibits?

Answer. No, sir; except from conversation with Cheever and from the fact of making up money packages in the bank and giving them to him when he was going on these expeditions.

Question. Mr. Cheever was to get one-third?

Answer. One-third of the profits, if any, for his services in purchasing.

Question. Did anybody else purchase for Mr. Lamar except Mr. Cheever?

Answer. Yes; several commission-houses purchased small lots. I have identified bills this morning of Remington & Son for such purchases, and of Young, Woods & Gardner. Rust & Meagher, of Florida, also purchased some small lots.

Question. What do you know about these Remington invoices more than that you have just seen them?

Answer. I recognize them as having passed through my hands and gone to their credit in Mr. Lamar's books, in his regular course of business.

Question. Do you know in whose handwriting they are?

Answer. No, I do not; I presume they are in Mr. Remington's.

(The latter portion of this answer objected to by counsel for the United States as not responsive to the question.)

Question. Do you know how much cotton was exported by the Georgia Importing and Exporting Company?

Answer. There was none exported while I was there. They had not then procured steamers or anything for that purpose.

Question. Was Mr. Lamar a cotton factor?

Answer. He was not.

Question. Did he have possession of any cotton that did not belong to him?

Answer. I am not aware of it.

150 [45] Question. What do you know of the account-current of Young, Woods & Gardner, which has been put in evidence as an exhibit to your deposition?

Answer. I know of its having passed through my hands and gone to their credit on Mr. Lamar's books. We had large transactions with this house, which was a commission house for guano principally. They had a regular account with Mr. Lamar.

Question. What is meant in that account by "guano notes?"

Answer. Mr. Lamar had sent them guano for sale, and they returned him the notes they received from the planters for this guano. The guano was sold on time.

Question. Did you have charge of Mr. Lamar's receipt-books?

Answer. I had possession of all his books, including his receipt-books.

Question. What did you have to do with his receipt-books?

Answer. I had often to refer to them in checking my accounts, in balancing Mr. Lamar's books—especially his cash accounts—to see where money had been paid.

Question. The information you have in regard to the number of bales of cotton purchased by Mr. Cheever you got from Mr. Lamar's books in the Treasury?

Answer. I refreshed my memory from the books yesterday.

Question. Could you give the number of bales without the books?

Answer. I could not accurately. I remember that the transactions were very large, but I could not give, with certainty, the exact number of bales without having so refreshed my memory. You will remember that those transactions occurred nine years ago.

Question. What was Mr. Lamar's business?

Answer. He was president of the Bank of Commerce. He was engaged in no other business so far as I am aware, except in buying cotton on his own account, as I have stated.

Question. Had he any store-house in Savannah?

Answer. He rented store-houses, and he had a warehouse of his own—that is, a cotton-press.

Question. The business you transacted for him was transacted at the bank?

Answer. In the president's room at the bank—yes, sir. That room is located immediately adjoining the front bank.

Question. Where is Captain Martin?

Answer. I do not know.

Question. Were you present when the arrangement was made in regard to that cotton?

Answer. I was not.

Question. Then you have no personal knowledge of what it was?

Answer. No personal knowledge. My only knowledge is from the entries I have made on the books?

Question. I understand you that all the money paid for the cotton purchased for Martin was charged to Lamar's account?

Answer. Yes, sir.

Question. How much cotton was there in this lot purchased on Martin's account?

Answer. I cannot state the amount.

Question. Does it appear in Mr. Lamar's books?

Answer. A part of it. I am under the impression that it does not all of it appear in Mr. Lamar's cotton-books.

Question. How did you leave Savannah?

151 [46] Answer. I went from Wilmington to Nassau in a blockade-runner as a passenger.

Redirect examination by counsel for claimant:

Question. Was any portion of the 5,768 bales of cotton mentioned as having been purchased for Mr. Lamar the property of the Georgia Importing and Exporting Company?

Answer. Two thousand five hundred bales were sold to that company

Question. I ask you if any portion of this cotton belonged to the Georgia Importing and Exporting Company?

Answer. No, sir; not that I am aware of.

Question. You spoke of Mr. Lamar having warehouses and a cotton-press; state where they were located.

Answer. He had a cotton-press at the eastern wharf, and he had large warehouses round the press, for the storage of cotton.

Question. Did he have any store-houses rented from Stoddard?

Answer. He had, and also from Mr. Williamson.

Question. Where were they situated?

Answer. They were situated on the wharves of Savannah.

Question. How far are these store-houses from the press and warehouses of Mr. Lamar that you have referred to?

Answer. Mr. Williamson's warehouse, I should judge, was half a mile distant; Stoddard's was between Williamson's and the cotton-press, about a quarter of a mile from the press.

Question. Were there any others near by?

Answer. Oh, yes.

Question. Did he own any himself near Stoddard's buildings?

Answer. He owned a warehouse between Stoddard's building and Williamson's building, near the Exchange dock.

Question. You spoke of the Martin cotton as being then paid for Martin and charged to Mr. Lamar, who held it for advances. Who had possession of that cotton during this time?

Answer. It was in Florida, subject to Mr. Lamar's order, the same as the other cotton.

Recross-examination by Mr. JOHNSON, counsel for the United States:

Question. Where was the 2,500 bales of cotton sold by Mr. Lamar to the Georgia Importing and Exporting Company?

Answer. It was about in Georgia and Florida. I do not think any of it had been delivered at that time.

Question. Had any of the cotton bought by Mr. Cheever been delivered in Savannah at the time you left?

Answer. There may have been. I did not attend to that department, and could not state how much had been delivered.

Question. What cotton had Mr. Lamar in Savannah at that time, so far as you know?

Answer. I could not state. I had nothing to do personally in regard to the department of receiving and storage.

Question. Did he have any?

Answer. I could not state positively. I merely attended to Mr. Lamar's in-door business—to the balancing of his ledgers and things of that kind.

Question. Could he have had any considerable amount of cotton there without your knowing it?

Answer. Oh, yes; any quantity.

Question. But you do not know of his having any tnere?

Answer. I could not positively say that he had, and I could not positively say he had not.

152 [47] Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. I do not.

A. S. LAWSON.

Ex. A.

Invoice of 74 bales cotton, purchased by Edw'd Remington & Son, for account of G. B. Lamar, esq'r., p'r order Wm. W. Cheever.

Marks.						
H. W.	46 bales.	500	422	415		
		504	406	435		
		448	372	423		
		392	483	417		
		413	520	438	& 1 bale, 623, p'r letter of E. Remington & Son, 24 Jan'y, 1863.	
		454	496	414		
		470	498	416		
		409	485	424		
		406	522	423		
		427	475	460		
		506	475	460		
		400	423			
		438	497			
		456	424			
		458	483			
		492	444			
		453	414			
		398				
		8,024	7,839	4,725	20,588 lb., @ 14	2,882 32
W. L. S.	11 bales.	‡8= 565		‡15= 590	E. & Parnell's w'house.	
		9= 497		16= 575		
		10= 543		17= 561		
		11= 585		18= 575		
		12= 565				
		13= 554				
		14= 572				
		3,881		2,301	6,182 lb., 14	865 48
T. K. L.	14 bales.	‡1= 518		‡8= 415	E. & Parnell's w'house.	
		2= 490		9= 516		
		3= 485		10= 550		
		4= 500		11= 540		
		5= 469		12= 512		
		6= 546		13= 628		
		7= 462		14= 578		
		3,470		3,739	7,209 lb., 13c	937 17
S. S.	3 bales.	‡1= 519			E. & Parnell's w'house.	
		2= 589				
		3= 619				
	74 bales.	1,727 lbs., @ 13				224 51
		Commissions on $4,909.48				123 73
						$5,033 21

EDWARD REMINGTON & SON.

E. E.
THOMASVILLE, GEO., *Oct'r 1st*, 1862.

D. B. 62.

(Indorsed:) E. Remington & Son. Invoice of 74 bales cotton. Oct. 3d, 1862.

153 [48]

Ex. B.

Invoice of 17 bales cotton, purchased by E. Remington & Son, p'r order & for ac. & risk of G. B. Lamar, esq., Sava., Geo., & stored with Evans & Parnell, in warehous', near depot, Thomasville.

Marks.						
P. S.	12 square bales.	‡1= 455		‡7= 598		
		2= 503		8= 455		
		3= 480		9= 488		
		4= 481		10= 470		
		5= 494		11= 489		
		6= 502		12= 457		
		2,915		2,957	5,872 lb., @ 12½	734

W W D	5 bales.	1= 466				
		2= 502				
		3= 515				
		4= 476				
		5= 421				
		2,380 lb., @ 12½				297 50
		Commission $1,031.50				25 78
						$1,057 28

E. E.
THOMASVILLE, *Oct'r 20th*, 1862.
J. E. 97

EDWARD REMINGTON & SON

G. B. LAMAR, Esq., *Savannah, Ga.:*

DEAR SIR: Above pleas' find invoice of 17 bales cotton, am't $1,057.28; charg' you this date. This cotton all in warehouse of Evans & Parnell. We have other cottons for you' account, to be delivered in a week or ten days.

Respectfully, yours,

EDWARD REMINGTON & SON.

(Indorsed:) E. Remington & Son. Invoice, 17 bales cotton. Oct. 20, 1862.

EX. C.

Invoice of 29 bales botton, purchased p'r order by E.&w'd Remington & Son., for account and risk of G. B. Lamar, esq., Savannah, Geo.

Mark.							
J. G. T.	29 bales cotton.	1= 536	11= 552	21= 565			
		2= 556	12= 562	22= 551			
		3= 550	13= 551	23= 552			
		4= 507	14= 512	24= 568			
		5= 521	15= 490	25= 545			
		6= 525	16= 554	26= 547			
		7= 519	17= 543	27= 487			
		8= 541	18= 572	28= 514			
		9= 534	19= 584	29= 558			
		10= 541	20= 562				
		5,330	5,482	4,897	15,699 lb., @ 14½		1,805 38
		Commission, 2½ p'r ct					45 13
							$1,850 51

EDWARD REMINGTON & SON.

E. E.
THOMASVILLE, GEO., *Oct'r 7th*, 1862.
D. B. 62.

154 [49] THOMASVILLE, GEO., *Oct'r 9th*, 1862.

G. B. LAMAR, Esq., *Savannah:*

DEAR SIR: Above we hand you invoice of twenty-nine bales cotton advanced you of the purchase on 7th. We flatter ourselves that this is the best purchase for the past months. We have been offered 12½c. for it. We have not had time to go to the warehouse to examine the conditionof your cotton. Will endeavor to do so in a day or two.

Respectfully, yours,

EDWARD REMINGTON & SON.

(Indorsed:) E. Remington & Son. Invoice of J. G. T. 29 bales cotton. Oct. 7th, 1862.

Ex. D.

Invoice of 60 bales cotton purchased p'r order & for account of G. B. Lamar, esq., Savannah, by E. Remington & Son.

Marks.									
T. B.	13 bales, at Quitman, No. 16:								
	#1= 434	#6= 480	#11= 484						
	2= 480	7= 498	12= 510						
	3= 518	8= 500	13= 504						
	4= 540	9= 538							
	5= 506	10= 468							
	2,478	2,484	1,498	6,460 lbs., @11½					742 90
W. Howard	7 bales, 582	478							
	440	433							
	596	599							
	633								
	2,251	1,510=3,761 lbs., @11¾							441 92
K. B., or K. Braswell.	37 bales. #1= 570	#11= 512	#21= 514	#31= 529					
	2= 442	12= 474	22= 418	32= 465					
	3= 524	13= 529	23= 500	33= 522					
	4= 552	14= 521	24= 510	34= 514					
	5= 550	15= 536	25= 519	35= 537					
	6= 549	16= 564	26= 492	36= 538					
	7= 509	17= 489	27= 478	37= 520					
	8= 510	18= 466	28= 534						
	9= 523	19= 472	29= 541						
	10= 509	20= 493	30= 531						
	5,228	5,056	5,037	3,625=18,956 lbs., @ 12½ c.					2,369 50
J. C. McKie.	3 bales, 472 432 497=1,401 lbs., @ 11								154 11
	Commission, 2½ per c't								92 71
									$3,801 14

E. E. D. B. 55.

EDWARD REMINGTON & SON.

THOMASVILLE, GEO., *Aug't 15th*, 1862.

THOMASVILLE, GEO., *Aug't 20th*, 1862.

G. B. LAMAR, Esq., *Savannah:*

DEAR SIR: Yours 17th inst. rec'd; contents noted; we have had many sellers or would-be sellers here since, but none selling & will not at present at less than 15c. for good cotton. Shall be pleased to be able to fill your order of 100 bales if we can. Above we hand you invoice of purchases for your accou't, now being del'd at depot as fast as it can be hauled from plantation. We ordered the T. B. cotton sent to Quitman last week to be forwarded as soon as could be.

Respectfully yours,

E. REMINGTON & SON.

155 [50] (Indorsed:) E. Remington & Son. Invoice, 60 b. cotton Aug't 15, 1862.

Ex. E.

Invoice of 109 bales cotton, purchased by E. Remington & Son, p'r order and for account of Mr. G. B. Lamar, Savannah, Geo.

Marks.									
W. W. D.	1 bale No. 7, 603 lbs. (E. & Parnell w' house), 12½								75 37½
W. L. S.	9 bales, #19= 434	#25= 426	This for W. W. Cheever						
	20= 422	26= 417							
	21= 445	27= 455	(E. & Parnell; 6-15)						
	22= 445	2,623							
	23= 428								
	24= 449								
		3,921	(McGlashers & Little) @ 14						548 94

D. L. C.	5 bales,	#1=	434								
		2=	454								
		3=	468								
		4=	476								
		5=	472								
			2,304 lbs., 11¼								540 73
A. M. C.	8 bales	#1=	565	#5=	601	(McG. & Little's house)					
		2=	528	6=	606						
		3=	602	7=	592						
		4=	601	8=	607						
			2,296		2,406=4,702 lbs., 11¼						264 96
J. C. B.	10 bales,	#1=	497	#6=	503	Evans' shed					
		2=	504	7=	500						
		3=	496	8=	495						
		4=	511	9=	537						
		5=	486	10=	489						
			2,494		2,524=5,018 lbs., @ 14						702 52
D. L. C.	6 bales,	#1=	526	5=	467	(McG. & Little's house)					
		2=	433	6=	476						
		3=	442		1,877						
		4=	476								
					2,820 lbs., 13¾						380 70
S. H. H.	60 bales.	#1=	478	#16=	428	#31=	476	#46=	448	(Evans.)	
32 burned.		2=	452	17=	456	32=	468	47=	470		
28 McKee.		3=	476	18=	398	33=	456	48=	468		
(In pencil:)		4=	442	19=	488	34=	456	49=	468		
A. q'rmaster.		5=	436	20=	454	35=	466	50=	486		
#9.		6=	458	21=	518	36=	490	51=	496		
		7=	474	22=	476	37=	452	52=	432		
		8=	494	23=	468	38=	410	53=	386		
		9=	478	24=	472	39=	478	54=	438		
		10=	476	25=	424	40=	488	55=	442		
		11=	462	26=	417	41=	508	56=	387		
		12=	462	27=	424	42=	416	57=	414		
		13=	462	28=	478	43=	440	58=	420		
		14=	492	29=	498	44=	476	59=	418		
		15=	488	30=	422	45=	476	60=	408		
			7,030		6,827		6,966		6,381=27,404 lbs., 14½		3,973 58
	99 bales. Amount over										$6,486 80
	99 bales. Amount bro't over										$6,486 80
Marks.											
D. B.	10 bales.	#1=	510	#6=	515						
—	—	2=	487	7=	506						
	109 bales.	3=	494	8=	550						
		4=	498	9=	511						
		5=	460	10=	472						
			2,449		2,554=5,003, @ 15 c						750 45
	Charges, commission 2½ per c't										184 93
											$7,422 18

(Indorsed:) E. Remington & Son. Invoice, 109 bales cotton. Jan'y 22, 1863.

156 [51] (In blue pencil:) Ascertain about McGashler & Little's house. 986—23. 28 bales in gin. #32. See weights within.

Ex. F.

Invoice of 90 bales cotton purchased by E. Remington & Son p'r order & for account & risk of Mr. G. B. Lamar, Savannah, Geo.

Marks & Nos.											
H. Wyche.	1 bale, 623 lbs.	This is bale of lot invoiced Oct'r 1st, not weighed, in R. R. E. 14..									87 22
E. F.	12 bales	#1=	498	#7=	531			McG. & Little's house.			
		2=	510	8=	500						
		3=	477	9=	500						
		4=	335	10=	506						
		5=	512	11=	497			(out.)			
		6=	492	12=	511						
			2,824		3,045	5,869 lbs.		"	"	15..	1,028 85

B. B.	8 bales	#1= 524	#4= 567	#7= 477							
		2= 573	5= 556	8= 532							
		3= 525	6= 574								
		#1, 622	1, 697	1, 009	4,328 lbs.	"	"	14½..	627 56		
S. W. S.	3 bales	#1= 585									
		2= 567									
		3= 496									
		1,648 lbs.				"	"	@15..	247 20		
Mc. C. & T. B.	4 bales	#1= 426									
		2= 313									
		3= 376									
		1,115	#1=438	1,553 lbs.		"	"	@16..	248 48		
R. S. W.	4 bales	#1= 527									
		2= 469									
		3= 541									
		4= 546									
		2 083 lbs.				"	"	16..	333 28		
J. B.	5 bales	#1= 511	#4=506								
		2= 489	5=472								
		3= 513									
		1, 513	978	2,491 lbs.		R. R. E.		15¾.	392 34		
L. H. R.	8 bales	#1= 497	#5= 532	McG. & Little.							
		2= 540	6= 470								
		3= 594	7= 516								
		4= 503	8= 489								
		2, 134	2, 007	4,141 lbs.				16..	662 56		
J. S. H. McKee 12.	18 bales	#1= 490	#7= 485	#13= 450	R. R. E.						
		2= 510	8= 465	14= 455							
		3= 475	9= 460	15= 468							
		4= 494	10= 475	16= 475							
		5= 498	11= 495	17= 470							
		6= 477	12= 494	18= 509							
		2, 944	2, 874	2, 827	8,64			17½.	1, 512 88		
J. C.	3 bales	#1= 534									
		2= 420									
		3= 428									
		1,392 lbs.						16..	222 72		
L. W. McKee 11.	24 bales	#1= 570	#7= 508	#13= 590	#19= 640						
		2= 606	8= 555	14= 563	20= 600						
		3= 533	9= 551	15= 610	21= 545						
		4= 522	10= 501	16= 532	22= 568						
		5= 506	11= 539	17= 480	23= 618						
		6= 539	12= 520	18= 510	24= 587						
	90	3, 276	3, 174	3, 285	3, 558	13,293 lb.		16..	2, 126 88		
	Commission, 2½ p'r c't								187 24		
									$7, 677 21		

E. E. D. R. 125.

THOMASVILLE, GEO., *April 25th*, 1863.

157 [52] (Indorsed:) E. Remington & Son. Invoice, 90 bales cotton. April 25, 1863.

Ex. G.

G. B. Lamar, esq., in account with Edward Remington & Son.

		Dr.			
1862.					
June	26	To invoice 13 bales cotton (at Quitman)	761 57		
July	8	" do. 40 b. c. (J. C. & K. Braswell)	2,586 70	392	23 14c. to add.*
Aug't	15	" do. 7 " (W. Howard)	452 96		
		" paid Evans & Parnill bill storage as rend	58 00	389	
Oct'r	1	" invoice 74 b. c. (H. W., W. L. S., & S. S.)	5,032 87	396	34c. to deduct.
	9	" " 29 " " (J. G. T.)	1,850 51	396	
	20	" " 17 " " P. S. & W W D	1,057 28	397	
Dec'r	15	" paid James Kirksey as p'r rec'pt	28,000	474	
1863.					
Jan'ry	20	" invoice 109 b. cotton	7,522 18	420	$100 too much.
	26	" do. 44 " " ac. Geo. W. Lamar	3,649 03	420	*20c. too much.
Feb'y	12	" do. 119 " " " "	9,586 85	420	
		" do. 12 " " " "	705 56	420	
April	28	" do. 90 " " Jones	7,677 21	445	
May	1	" paid D. J. Holloway his time for G. W. Lamar	119	435	
	26	Storage	50	474	
			$69,109 72		
Oct'r	26	To ballance bro't down	2,043 87		
		Cr.			
1862.		386 474			
July	8	By our draft 90 days, am't $4,000, dic't 93 d. $72.32	3,927 68	474 386	
Oct'r	9	" our draft J. G. Thomas, Oct'r 7th	1,805 38	400	
Dec'r	12	" cash p'r Mr. Lyon	40,000	408	
1863.					
Jan'y	24	" cash p'r R. Road	10,000	416	
Feb'y	12	" cash p'r R. Ro	10,000	423	
May	21	" cash of H. M. Stevens	1,332 79	446	
Oct'r	26	" ballance carried down	2,043 87		
			$69,109 72		

* Erased.

E. E.
THOMASVILLE, GEO., *Oct'r 26th*, 1863.

EDWARD REMINGTON & SON.

(Indorsed:) E. Remington & Son. Ac. current. Oct. 26, 1863.

Ex. H.

Memo. as p'r acc't current, rend'd July 4, '62. *Guano notes collected.*

Nett amo. paid for 16 b. c. rec'd on guano notes		919 24
Paid storage & delivering 14 b. c		24 25
" " & " 2 "		4 13
" drayage on 16 " @		5 80
" commissions on 16 " @		16 00
	J. 413...	969 42
Deduct amo. guano notes, interest & protest collected, J. 387...		938 06
Bala. due on 16 b. c., rec'd on guano notes		$31 36

158 [53] J. 412 &

Amo. cash rec'd p'r express for purchase cotton $32,000 00

Amo. invoice, 345 bales cotton	$31 913 77	J. 413
Amo. due on 16 " " as above	31 36	
Amo. cash remitted herewith to balance, J. 413	64 87	
		32,000 00

YOUNG, WOODS & GARDNER.

EUFAULA, ALA., *Jan'y* 23, '63.

(In pencil:) On 4 July, 1862, we handed you invoice of 16 B. C.

(Indorsed:) Young, Woods & Gardner. Ac. current, Jan'y 23, 1863. H.

MEM'M.—EX. I.

G. B. Lamar—3-3ª ac.—in ac. with Wm. W. Cheever.

1862.					
Aug't 26.	Paid	Est. Galphin, on acc. crop	1,367 50		
Sept. 1.	"	A. Hopkins, 34 B. C	2,237 52		
" 2.	"	Gen'l Bailey, for 24 "	1,319 50		
" 3.	"	P. B. Brokaw " 20 " on ac	1,105 00		
" 4.	"	A. Hopkins " 4 "	259 68		
Aug't 27.	"	Green A. Chaires, ac. crop	14,000 00		
Sept. 23.	"	Expenses on 32 B. C, *a* f'm Quincy to Quitman	170 00		
Oct'r 17.	"	Green A. Chaires, ac. crop	10,000 00		
" 13.	"	for 5 B. C., R. P	331 50		
Aug't 27.	"	Benj. Chaires, ac. crop	4,000 00		
				34,790 70	
Oct. 22.	"	J. A. Craig, 3 B. C	202 40		
" "	"	Dan'l Johnson, ac. 10 B. C	400 00		
" "	"	J. R. Harris & Co., ac. tob	20,000 00		
" "	"	A. Hopkins, 35 B. C., (H) 2,437.24	2,437 24		
" 13.	"	J. R. Harris & Co., tob. ac.	10,000 00		
" 22.	"	Benj. Chaires, s'r, ac. crop	6,000 00		
" "	"	P. B. Brokaw, bal. on 20 B. C	168 25		
" 23.	"	P. Barnard, 5 B. C	292 50		
" "	"	Dan'l Johnson, bal. on 16 B. C	597 40		
" "	"	W. Johnson, 6 B. C	427 90		
				40,525 69	
" "	"	J. Johnson, 5 "	333 25		
" 24.	"	J. D. Branch, on ac., 35 B. C	900 00		
" "	"	J. R. Crump, " " 37 "	900 00		
" 27.	"	Mrs. Murat, " " 4 "	250 00		
" "	"	B. Bellamy, " " crop	350 00		
" 28.	"	Green A. Chaires, " "	9,000 00		
" 30.	"	Est. Galphin, " "	1,500 00		
" 31.	"	R. Maxwell, 4 B. C	206 90		
Nov'r 1.	"	R. Roberts, 6 B. C	361 65		
" 13.	"	J. R. Harris & Co., tobacco ac	35,000 00		
" "		J. A. Smith, 4 B. C	207 10		
				49,008 90	
		Carried over		$124,325 29	

		Am't bro't over	$124,325 29		
Nov'r 12.	Paid	J. M. Shine, 8 B. C	562 00		
" "	"	Est. Galphin, bal. on 61 B. C	764 91		
	"	1. " C. P. Chaires, ac. crop	9,929 95		
159 [54]	"	17. " J. R. Harris & Co., ac. tob	15,000 00		
	"	" " J. J. Williams, for ac. C. A. L. L., on ac. cotton crop	5,200 00		
" "	"	J. R. Crump, bal. on 37 B. C	1,602 11		
" "	"	Rush & Meagher, to pay for Whitfield crop	5,682 62		

"	"	A. A. Fisher, 134 B. C	7,872 89		
"	"	R. H. Butler, 3 B. C	200 29		
					171,139 97
"	"	L. Smithrick, 3 B. C	181 42		
"	"	G. H. Meginnis, 92 B. C	6,271 02		
"	"	J. Lee, 15 B. C	847 99		
"	"	J. Roberts	262 25		
"	"	Mrs. Winthrop, ac. crop	3,198 83		
"	"	F. Chaires, " "	2,044 00		
Aug't 27.	"	J. R. Harris & Co., " " tob	10,440 00		
					22,761 51
					193,901 48

Cr.

Aug't .	Rec'd f'm G. B. L	30,000 00		
Sept'r 27.	" thro. B'k Commerce	15,000 00		
Oct'r 22.	" p'r W. Lyon	50,000 00		
Nov'r 12.	" f'm G. B. L	100,000 00		
	My d't, fur'd comm	1,300 00		
	Paid F. Chaires by you	2,000 00		
	" W. W. C., this ac	200 00		
	Bal. carried down on depo			4,598 52
		$198,500 00	$198,500 00	
	Bal. brought down			4,598 52

Tallahassee, Nov'r 20th, 1862.

W. W. CHEEVER.

Have bought to date about 3,300 B. C. for his ac.; will require about $100M more to finish paying for it.

(Indorsed:) W. W. Cheever's ac. current, Nov. 20, 1862.

[Extract.]

Rec'd, Aug't 20th, 1862, of G. B. Lamar, twenty thousand dollars, to buy 100 bales cotton for Mrs. McLeod & them for it. Ac. with G. B. Lamar, C. A. Lamar & myself.

(Signed) W. W. CHEEVER.

Received, Savannah, Nov. 10th, 1862, of G. B. Lamar, esq., one hundred thousand dollars, to be used in payment for cotton & tobacco.

(Signed) W. W. CHEEVER.

[Extract.]

G. B. Lamar to Sav., Albany & Gulf R. R. Co.

Aug't 14.	J. J. W	100	bales	cotton,	51,650 lb. =	$273 75
21.	K. Bracewell	5	"	"	2,560 lb.	13 31
"	"	10	"	"	5,060 lb.	26 31
"	W. H. Howard	7	"	"	4,400 lb.	24 44
"	J. C	3	"	"	1,400 lb.	7 28
160 [55]	Aug't 28. J. J. W	30	"	"	14,621 lb.	76 34
	Sept. 2. K. Bracewell	22	"	"	10,980 lb.	57 11
"	J. J. W	260	"	"	139,655 lb.	726 20
"	"	14	"	"	6,860 lb.	35 67
6.	J. M. / J. J. W. / J. J. W.	24 / 21	"	"	21,894 lb.	113 85
7.	T. B	13	"	"	6,325 lb.	30 36
13.	J. J. W	24	"	"	11,485 lb.	59 72
		34	"	"	17,800 lb.	92 56
	T. B. Harris	11	"	"	5,615 lb.	26 95
		579 bales			300,605 lb. =	$1,563 85

Rec'd pay't 8th Oct., 1862.

(Signed) L. M. HAMILTON.

Received, Savannah; Nov. 5th, 1862, of G. B. Lamar, two thousand dollars, on ac. of my cotton crop, about 200 bales, sold to W. W. Cheever, agent for G. B. L., by my agent, Benj. Chaires.

$2,000.00.

(Signed) F. CHAIRES.

SAVANNAH, *Nov. 22d*, 1862.

Rec'd from G. B. Lamar, esq., three hundred dollars, for one year's reduced rent of stores to 1st inst.

$300.

(Signed) J. STODDARD.

[Extract.]

G. B. Lamar to Sav. & Gulf R. R. Co.

1862.						
Sept. 27.	C. B. Turner or G. B. Lamar,	"	15	bales cotton.....	7,735 lb.	$37 13
Oct. 1.	"	"	2	.....	1,050 lb.	6 30
14.	"	"	4	.....	2,090 lb.	12 50
			21 B.		10,875	= $55 93

Rec'd pay't Jan'y 13, 1863.

L. M. HAMILTON.

SAVANNAH, 3 *Jan'y* 1862.

Rec'd from G. B. Lamar fifty thousand dollars ($50,000), for which I am to account to him.

$50,000.

(Signed) W. W. CHEEVER.

[Extract.]

B. G. Lamar to C. R. R. & B. Company.

1863.							
Jan'y 14.	141	bales cotton (river).....	$346 76	324 31 =	$671 07		
27.	202	" " "	552 26	516 63 =	1,068 89		
30.	97	" " "	39 78	37 10 =	76 88		
	360				$1,816 84		

Rec'd pay't Feb'y 19, 1863.

(Signed) JAMES A. COURVOISIE, *Tr.*

161 [56] $2,800.] SAVANNAH, *Feb'y 27th*, 1863.

One day after date I promise to pay G. B. Lamar, esq., or order, twenty-eight hundred dollars, value received.

(Signed) W. W. CHEEVER.

Received, Sav'h, Feb'y 27, 1863, from G. B. Lamar, twenty-five thousand dollars, to pay for cotton. It ac.

$25,000.

(Signed) W. W. CHEEVER.

Also, in addition to above, twenty-five thousand dollars, Feb'y 27th, 1863.

$25,000.

(Signed) W. W. CHEEVER.

Also, rec'd eight thousand dollars in C. S. 8 % bonds, & int. from Jan'y 1st last.

$8,000 & int.

(Signed) W. W. CHEEVER.

Rec'd, June 23d, 1863, from G. B. Lamar, cotton receipts for 2,666 bales, at Thomasville:

			2,666
F. H. Costen, on Evans & Parnell, for		M. P.	143
Do.	do.	B. T.	66
		B.	
Do.	do.	C. S.	36
		I.	
Do.	do.	estate J. W. Coffin	97
			3,008

Three thousand & eight bales to be exchanged for others in duplicates.

(Signed) W. W. CHEEVER.

[Extract.]

G. B. Lamar to Atlantic & Gulf R. R. C.

1863.

June 6.	C. C.	12	bales	cotton	6,020 lb.	$52 98
"		20	"	"	10,130	89 14
	G C	52	"	"	16,045	141 20
"		24	"	"	8,515	74 93
"		6	"	"	1,695	14 92
		114	bales		42,405 lb. =	$373 17

Rec'd pay't July 10th, 1863.

(Signed) L. M. HAMILTON.

[Extract.]

G. B. Lamar to Atlantic & Gulf R. R. Co.

1863.

June 6. J. J. M. 61 S. S. 2, W. B. 19 M B 12

H. M. 3 J. J. B. 3, P. 11 C. A. B. 8 =

114 bales cotton ... $484 22

P'd 25 July.

(Signed) L. M. HAMILTON.

162 [57, 58] *G. B. Lamar to C. R. R. Company.*

1863.

June 24. W. 9 bales S. I. cotton (express) $58 50

Rec'd pay't July 31st, 1863.

(Signed) JAMES A. COURVOISIE, *Tr.*

G. B. Lamar to C. R. R. Company.

1864.
Mar. 10. G. B. 5, W. A. M. 10, ◇M 6, ◇H 4

G. B. 1, W. A. M. 1, ◇M 3, H 2

◇F 8, G. B. L. 3, = 43 bales cotton from Fort Valley (W. J. A.) $412 80
91 S. I. cotton from Augusta 723 45

$1,136 25

Rec'd payment March 28th, 1864.

JAMES A. COURVOISIE, *Tr.*

Rec'd, Sav'h, Nov. 13, 1865, from G. B. Lamar fifty-four dollars, for rent of Williamson's store, in full to date.

(Signed) JOHN WILLIAMSON.

1,240 bales.

Ex. L.

C. A. L. Lamar in account with Wm. J. Anderson to 11th, 1862.

1862.										
Ma'ch	2.	To	8	bales cotton, marked	C. P. B. Cullen	3,685 lb.,	8	294 80		
	"	"	10	"	do. "	A. B	4,866 "	8	389 28	
	3.	"	4	"	do. "	J. H. H	2,244 "	8c.	179 52	
	10.	"	6	"	do. "	J. V	3,324 "	8c.	265 92	
	11.	"	4	"	do. "	E. L. F	2,295 lb.,	8	183 60	
Dec'r	6.	"	6	"	do. "	J. McM	2,551 lb.,	8	204 08	
			38	Com. for purchasing 38 bal. cot., 50c					19 00	
Dec.	6.	By am't collection on John McMillian's note							" "	204 08
M'rch	2.	" note collected on Dr. P. B. D. H. Cullen							" "	52 15
	"	"	"	"	" Dr. C. H. Richardson				D. B. 32	100 92
"	"	"	"	"	" Josiah Vinson				" "	197 47
"	"	"	ball'a. collected on J. H. Hose' note							46 65
									$1,536 20	$601 47

D. B. J. 40 & 42.
Up to M'ch 11, 1862.

WM. J. ANDERSON & CO.

(Indorsed:) W. J. Anderson. 38 bales cotton. March 13, 1862.

163 [59] United States Court of Claims. December term.

G. B. LAMAR
vs.
THE UNITED STATES. } No. .

Now comes the said claimant, by James Hughes, his solicitor, and moves that the Hon. Secretary of the Treasury be requested to transmit to this court copies of the following papers:

Receipt of supervising special agent A. G. Browne to Colonel William K. Kimball, for the cotton claimed by G. B. Lamar and the Importing and Exporting Company of Georgia.

JAMES HUGHES,
Solicitor for Claimant.

(Indorsed:) 3222. G. B. Lamar vs. The United States. Motion requesting copy of paper from Treasury Department. Allowed 23d April, 1872. E. Peck, judge. Filed and issued April 23, 1872. J. R.

UNITED STATES OF AMERICA:

3222] TREASURY DEPARTMENT.

In pursuance of the act of Congress of 22d of February, 1849, relating to the certification of records under seal by the Secretary of the Treasury, and of the act of February 24, 1855, section 13, empowering the United States Court of Claims "to call upon any of the Departments for any information it may deem necessary," and whereas the last provision of the above-named section, to wit: That the head of no Department shall answer any call for information or papers if, in his opinion, it would be injurious to the public interest, is in nowise violated by the transmission of the annexed information: Therefore, on this 6th day of May, in the year A. D. one thousand eight hundred and seventy-two, the Secretary of the Treasury of the United States, in answer to the rule of the above-named Court of Claims, dated April 23, 1872, submits the following transcripts of original papers and records as being the information now on file in his office touching the matters inquired of by said rule in the cause of G. B. Lamar vs. The United States, to wit:

Receipt of supervising special agent A. G. Browne for the cotton claimed by G. B. Lamar, the Importing and Exporting Company of Georgia, etc.

[SEAL.] WILLIAM A. RICHARDSON,
Acting Secretary of the Treasury.

(Copy. J. R. H.)

TREASURY DEPARTMENT,
FIFTH SPECIAL AGENCY, CENTRAL OFFICE,
Savannah, Ga., January 24th, 1866.

Received on August 15th, 1865, from Colonel William K. Kimball, 12th Reg't Maine Volunteer Infantry—

One thousand and eighteen bales of cotton claimed to be property of the Importing and Exporting Company of the State of Georgia.

164 [60] Four hundred and eighty-four bales of cotton claimed to be property either of G. B. Lamar or of the Importing and Exporting Company of the State of Georgia.

Three hundred and thirty-one bales of cotton claimed to be property of the State of North Carolina.

Thirty-one bales of cotton claimed to be property of the State of Georgia, being a total of 1,864 bales of cotton marked and weighing as per schedules hereto annexed; the same having been seized under military orders on June 19th, 1865, by the military forces of the United States, at and near Thomasville, in the State of Georgia, upon the occupation of that region by said troops, and being now turned over by said Kimball, in obedience to orders of Major Gen'l Brannan, U. S. Vol's, comm'd'g district of Savannah.

This property I have received as special agent of the Treasury Department, appointed in pursuance of certain acts of Congress, approved July 13th, 1861, May 20, 1862, March 12, 1863, and July 2, 1864. The said property to be transported and disposed of under the regulations of the

G. B. Lamar to C. R. R. Company.

1864.
Mar. 10. G. B. 5, W. A. M. 10, Ⓜ 6, Ⓗ 4

G. B. 1, W. A. M. 1, Ⓜ 3, H 2

Ⓕ 8, G. B. L. 3, = 43 bales cotton from Fort Valley (W. J. A.) $412 80
91 S. I. cotton from Augusta 723 45

$1,136 25

Rec'd payment March 28th, 1864.

JAMES A. COURVOISIE, *Tr.*

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(Signed) JOHN WILLIAMSON.

1,240 bales.

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C. A. L. Lamar in account with Wm. J. Anderson to 11th, 1862.

1862.										
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	"	"	10	"	do.	" A. B	4,866 "	8	389 28	
	3.	"	4	"	do.	" J. H. H	2,244 "	8c.	179 52	
	10.	"	6	"	do.	" J. V	3,324 "	8c.	265 92	
	11.	"	4	"	do.	" E. L. F	2,295 lb.,	8	183 60	
Dec'r	6.	"	6	"	do.	" J. McM	2,551 lb.,	8	204 08	
			38	Com. for purchasing 38 bal. cot., 50c					19 00	
Dec.	6.	By am't collection on John McMillian's note							" "	204 08
M'rch	2.	" note collected on Dr. P. B. D. H. Cullen							" "	52 15
	"	"	"	"	"	" Dr. C. H. Richardson			D. B. 32	100 92
"	"	"	"	"	"	" Josiah Vinson			" "	197 47
"	"	"	bal'a. collected on J. H. Hose' note							46 65
									$1,536 20	$601 47

D. B. J. 40 & 42.
Up to M'ch 11, 1862.

WM. J. ANDERSON & CO.

(Indorsed:) W. J. Anderson. 38 bales cotton. March 13, 1862.

163 [59] United States Court of Claims. December term.

G. B. LAMAR
vs.
THE UNITED STATES. } No.

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JAMES HUGHES,
Solicitor for Claimant.

(Indorsed:) 3222. G. B. Lamar vs. The United States. Motion requesting copy of paper from Treasury Department. Allowed 23d April, 1872. E. Peck, judge. Filed and issued April 23, 1872. J. R.

UNITED STATES OF AMERICA:

3222] TREASURY DEPARTMENT.

In pursuance of the act of Congress of 22d of February, 1849, relating to the certification of records under seal by the Secretary of the Treasury, and of the act of February 24, 1855, section 13, empowering the United States Court of Claims "to call upon any of the Departments for any information it may deem necessary," and whereas the last provision of the above-named section, to wit: That the head of no Department shall answer any call for information or papers if, in his opinion, it would be injurious to the public interest, is in nowise violated by the transmission of the annexed information: Therefore, on this 6th day of May, in the year A. D. one thousand eight hundred and seventy-two, the Secretary of the Treasury of the United States, in answer to the rule of the above-named Court of Claims, dated April 23, 1872, submits the following transcripts of original papers and records as being the information now on file in his office touching the matters inquired of by said rule in the cause of G. B. Lamar vs. The United States, to wit:

Receipt of supervising special agent A. G. Browne for the cotton claimed by G. B. Lamar, the Importing and Exporting Company of Georgia, etc.

[SEAL.] WILLIAM A. RICHARDSON,
Acting Secretary of the Treasury.

(Copy. J. R. H.)

TREASURY DEPARTMENT,
FIFTH SPECIAL AGENCY, CENTRAL OFFICE,
Savannah, Ga., January 24th, 1866.

Received on August 15th, 1865, from Colonel William K. Kimball, 12th Reg't Maine Volunteer Infantry—

One thousand and eighteen bales of cotton claimed to be property of the Importing and Exporting Company of the State of Georgia.

164 [60] Four hundred and eighty-four bales of cotton claimed to be property either of G. B. Lamar or of the Importing and Exporting Company of the State of Georgia.

Three hundred and thirty-one bales of cotton claimed to be property of the State of North Carolina.

Thirty-one bales of cotton claimed to be property of the State of Georgia, being a total of 1,864 bales of cotton marked and weighing as per schedules hereto annexed; the same having been seized under military orders on June 19th, 1865, by the military forces of the United States, at and near Thomasville, in the State of Georgia, upon the occupation of that region by said troops, and being now turned over by said Kimball, in obedience to orders of Major Gen'l Brannan, U. S. Vol's, comm'd'g district of Savannah.

This property I have received as special agent of the Treasury Department, appointed in pursuance of certain acts of Congress, approved July 13th, 1861, May 20, 1862, March 12, 1863, and July 2, 1864. The said property to be transported and disposed of under the regulations of the

Secretary of the Treasury, prescribed in pursuance of the authority conferred on him by said acts.

For this property a memorandum receipt—without annexed schedules—was given by me to said Kimball on said Aug. 15, 1865, it being then impossible for him to invoice to me said property except in bulk, the marks and weights not then having been ascertained, and such invoice having now been given by him to me simultaneously herewith.

ALBERT G. BROWNE,
Supervising Special Agent.

Cotton of the Importing & Exporting Company.

No. bales.	No. bales.	Mark.	Weight.
Ninety-five	95	Est. J. W. C.	52, 900
Fourteen	14	L. F.	6, 566
Five	5	I. F.	2, 213
Six	6	T. C. V.	2, 914
Sixteen	16	D. M.	8, 743
Four	4	J. R. M.	2, 111
Seven	7	J. S. W.	3, 232
Thirty-six	36	F. C.	19, 208
Two	2	H. Q.	920
Thirty-four	34	J. D. B.	18, 251
Thirteen	13	J. R. C.	6, 281
Thirteen	13	(G)	6, 193
Fifteen	15	W. C.	7, 069
Forty-eight	48	J. T.	25, 702
Eight	8	J. W. S.	3, 678
Five	5	J. M. D.	2, 206
Twenty-eight	28	T. J. R.	13, 455
Two	2	J. J.	946
Nine	9	E. B.	4, 390
Two	2	D. & J. E. McL.	950
Six	6	J. C. B.	2, 781
Eight	8	Bryan.	4, 461
Six	6	J. W.	3, 125
Thirty-three	33	L. S.	14, 846
Fifteen	15	E. W.	6, 859
Thirty-four	34	(H)	18, 138
Forty-six	46	J. R. B.	25, 855
Seven	7	Est. R. W.	3, 756
Five hundred seventeen	517	Total	266, 939

165 [61] *Cotton of the Importing & Exporting Company*—Continued.

No. bales.	No. bales.	Mark.	Weight.	
Brought up	517		266,939	Brought up.
Four	4	S. C. W.	2,130	
Nineteen	19	B. W. S.	8,762	
Five	5	D. W. G.	2,610	
One	1	J. Pope.	340	
Forty-three	43	W M	23,161	
Two	2	L. G.	920	
One	1	J. J. McR.	485	
Five	5	L	2,150	
Two	2	E	885	
Two	2	H. G. S.	905	
Forty-two	42	W.	20,502	
Fifty-one	51	M	25,465	
Three	3	H.	1,330	
Five	5	L. J.	2,448	
Thirty-seven	37	C. B. G.	18,989	
Twelve	12	F.	6,911	
Two	2	M.	840	
Six	6	R. D. J.	3,010	
Twenty-seven	27	L	12,900	
Sixty-three	63	R M.	30,257	
Eleven	11	L. J. M. D.	5,108	
Five	5	T. H.	2,538	
Seven	7	D. E.	3,293	
Sixty-four	64	T. M.	31,395	
Eighteen	18	E. V.	8,443	
Four	4	C. H.	2,346	
One	1	R. M. T.	458	
Nine hundred & fifty-nine	959	Total	485,520	
Brought up	959		485,520	Brought up.
Three	3	R. M. P.	1,392	
Thirty-eight	38	No mark.	18,262	
Three	3	F	1,445	
Four	4	W. F. R.	2,006	
Five	5	S. & W.	2,405	
Two	2	A. D.	856	
Three	3	I. A. S.	1,463	
One	1	W. M.	450	
One thousand and eighteen	1,018	Total	513,799	

Cotton supposed to belong to G. B. Lamar, or to the Importing and Exporting Company of the State of Georgia.

No. bales.	No. bales.	Mark.	Weight.
One hundred & forty-three	143	M. P.	74,542
Fifty-seven	57	J W.	27,934
Sixty-six	66	B. T. B.	35,360
Sixty-five	65	B. C.	29,760
One hundred & six	106	G. A. C.	53,841
Thirty-six	36	C. S. I.	19,113
Nine	9	W. T. T.	4,768
Two	2	W. T.	1,010
Four hundred eighty-four	484	Total	246,328

166 [62] *Cotton of the State North Carolina.*

No. bales.	No. bales.	Mark.	Weight.
Twenty-one	21	C. D.	9, 687
One	1	I. F.	534
Seventy-seven	77	J. S.	32, 397
Thirty-four	34	Mc. & S.	17, 276
One	1	R. S. W.	400
Four	4	R. W.	1, 866
Four	4	J. H. B.	1, 785
Two	2	L	1, 050
Five	5	S. B.	2, 018
One	1	A. L.	440
Twenty-one	21	Miles.	9, 923
Nine	9	E. M.	4, 705
Twenty-three	23	R. W. Heath.	10, 533
Five	5	W. W. D.	2, 233
One hundred and twenty-three	123	J. McK. & Co.	59, 556
	331	Total	154, 403

Tax cotton, supposed to belong to the State Georgia.

No. bales.	No. bales.	Mark.	Weight.
One	1	D. E. M.	540
Two	2	H. H. W.	955
One	1	M. B.	514
Three	3	A. M. C.	1, 630
One	1	D. W. G.	550
One	1	J. R. B.	540
One	1	H	450
One	1	B	400
Ten	10	B	3, 916
Ten	10	A. McD.	4, 081
Thirty-one	31	Total	13, 576

RECAPITULATION.

Name of party claiming cotton.	Number of bales.	Number of bales.	Weights
Imp't'g and Exp't'g Co	One thousand & eighteen	1, 018	513, 799
G. B. Lamar	Four hundred & eighty-four	484	246, 328
State North Car'l	Three hundred & thirty-one	331	144, 403
State Geo. (tax)	Thirty-one	31	13, 576
Total	Eighteen hundred and sixty-four	1, 864	928, 106

167 [63 64] United States Court of Claims.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

EVIDENCE FOR CLAIMANT.

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George A. Croom	6
Smith Simpkins	7
B. W. Bellamy	9

168 [65] In the United States Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

The deposition of John P. Coles, for claimant, taken at Tallahasse, Fla, on the 27th day of August, 1872.

First interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is John P. Coles; occupation, a cotton-broker; age, fifty-three years; place of residence during the past year, Leon County, Fla.; have no interest, direct or indirect, in this claim, and am in no way related to the claimant.

By attorneys for claimant:

Interrogatory 1. Are you or not acquainted with either of the parties in the above case?

Answer. I know G. B. Lamar, the claimant.

Interrogatory 2. Were you or not acquainted with Samuel G. Cabell?

Answer. I was acquainted with him.

Interrogatory 3. In what capacity was the said Samuel G. Cabell acting, and at what time?

Answer. He was acting as United States Treasury agent. This was in the year eighteen hundred and sixty-five and eighteen hundred and sixty-six.

Interrogatory 4. Do you or not know of the said Cabell seizing or taking, or causing to be seized or taken, any cotton in the State of Florida, in the years eighteen hundred and sixty-five or six, or at any other time. If yea, state whose cotton it was before said seizure, and by whom

it was bought and from whom. How many bales were so seized, and what were their marks and weights?

Answer. I know of cotton seized by said Cabell in February, eighteen hundred and sixty-six, as follows: George A. Croom, twelve bales of sea island, marked "L," averaging three hundred and fifty pounds per bale; B. W. Bellany, fifty-six bales, averaging five hundred pounds per bale, marked "B. W. B."; G. W. Whitfield, ninety-one bales, marked "W." and weighing forty-five thousand four hundred and sixty-one pounds; R. Gemble, twenty-four bales, marked "R. G.," and averaging five hundred pounds per bale; F. R. Cotton, ninety-seven bales, marked $\frac{B\ T}{B}$ and averaging about five hundred pounds per bale; ninety-eight bales marked $\frac{C\ S}{I}$ averaging five hundred pounds per bale, from F. R. Cotton; estate of S. W. Parkhill, twenty-three bales marked (P) and averaging five hundred pounds per bale; Mrs. Wm. Bailey, sr., twenty-five bales, marked "G," and averaging five hundred pounds. All of this cotton was remarked by the said Cabell. "U. S." This cotton was purchased from the above-named parties by W. W. Cheever, the agent of G. B. Lamar, the claimant. I weighed the cotton and marked it, and it was seized as Lamar's cotton.

Interrogatory 5. Did or did not G. B. Lamar have an agent who attended to his cotton purchases in the State of Florida?

169 [66] Answer. He did have such agent, who was W. W. Chever. After the death of the said Chever, in the year eighteen hundred and sixty-three, I acted as such agent, from that time to the close of the war.

Interrogatory 6. Did you or not receive any directions, orders, instructions, or requests from Samuel G. Cabell, verbal or written, in reference to said cotton?

Answer. I received no instructions. I told Cabell that it was G. B. Lamar's cotton, and he made no answer.

Interrogatory 7. What was the general character of said Samuel G. Cabell, for truth and veracity; and would you believe him on oath?

Answer. His general character for truth and veracity was not good. I would not believe him on oath.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I know of nothing more than the testimony heretofore given.

JOHN P. COLES.

The deposition of Frederick R. Cotton, for claimant, taken at Tallahassee, Fla., on the 27th day of August, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, you are related to the claimant.

Answer. My name is Frederick R. Cotton; occupation, a planter; res-

idence during the past year, Tallahassee, Leon County, Fla.; age, fifty-two years; have no interest, direct or indirect, in this case, and am in no way related to the claimant.

Interrogatories by attorneys for claimant:

Interrogatory 1. Are you or not acquainted with either of the parties?

Answer. I think I have seen G. B. Lamar, but am not positive.

Interrogatory 2. Were you or not acquainted with one Samuel G. Cabell; and, if you knew him, at what time, and in what capacity was he acting?

Answer. I knew a man named Cabell, who professed to act as United States Treasury agent. This was in eighteen hundred and sixty-five or eighteen hundred and sixty-six—don't remember the exact year, but it was shortly after the close of the war, when General Foster was in command. I received an order from General Foster, requiring me to deliver certain lots of cotton to said Cabell, as the agent of the United States Treasury.

Interrogatory 3. Do you or do you not know of the said Cabell seizing, or taking, or causing to be seized, or taken, any cotton in the State of Florida, in the year eighteen hundred and sixty-five, or eighteen hundred and sixty-six? If yea, state whose cotton it was before seizure by Cabell; from whom it was purchased before seizure, and by whom it was bought? How many bales were so seized, and what were the marks and weight.

Answer. The only cotton I know that was seized, was that 170 [67] mentioned in my previous answer. I do not now remember the number of bales alluded to in my previous answer, as I have no data with me. The number can be ascertained from the books of T. L. Perkins, who acted as my commission merchant. The cotton was a lot I sold to Mr. Cheever, and I understood at the time of the seizure that it was seized as the cotton of G. B. Lamar.

Interrogatory 4. What was the general character of said Cabell for truth and veracity in this section?

Answer. His general character for truth and veracity was not good.

Interrogatory 5. From the general character of said Cabell for truth and veracity, would you believe him on oath?

Answer. I might believe him, but it would be with some misgivings.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

F. R. COTTEN.

The deposition of George Whitfield, for claimant, taken at Tallahassee, Fla., on the 27th day of August, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is George Whitfield; age, sixty-eight years; occupation, a planter; residence during the past year in Jefferson County, Fla. I have no interest, direct or indirect, in this claim, and am in no way related to the claimant.

Interrogatories by attorneys for claimant:

Interrogatory 1. Are you or not acquainted with the parties, or either of them, in the above case?

Answer. I am not acquainted with the parties.

Interrogatory 2. Were you or not acquainted with one Samuel G. Cabell; and, if you knew him, at what time, and in what capacity was he acting?

Answer. I never knew said Cabell.

Interrogatory 3. Do you or not know of said Cabell seizing, or taking, or causing to be seized or taken, any cotton in the State of Florida, in the year eighteen hundred and sixty-five?

Answer. I do not.

Interrogatory 4. Did you or not, at any time prior to the year eighteen hundred and sixty-five, sell any cotton to G. B. Lamer or his agent? If yea, how many bales did you sell; what was their weight and marks, and when was said sale?

Answer. I sold some cotton to a Mr. Cheever, but did not know that he was the agent of G. B. Lamer, or any one else. I sold him ninety-one bales of cotton, averaging in weight about five hundred pounds to the bale, and marked "W." This sale was some time in November, eighteen hundred and sixty-two.

Interrogatory 5. Did you or not receive any instructions from Samuel G. Cabell about said cotton or its delivery, and to whom did you deliver it, and as whose property?

171 [68] Answer. I received no instructions from said Cabell. I delivered said cotton at station No. 2, Pensacola & Savannah Railroad, as the property (as I then thought) of Mr. Chever.

Interrogatory 6. Do you or not know what disposition was made of said cotton—by whom it was taken after delivery at said station No. 2?

Answer. I do not.

Interrogatory 7. Do you or not know the general character of Samuel G. Cabell for truth and veracity?

Answer. I know nothing of the character of said Cabell for truth and veracity.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I know nothing further.

GEO. WHITFIELD.

The deposition of George A. Croom, for claimant, taken at Tallahassee, Fla., on the 27th day of August, 1872.

First interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence during past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry, and whether, and in what degree, you are related to the claimant.

Answer. My name is George A. Croom; occupation, a planter; age, fifty years; place of residence during the past year, Leon County, Fla.; have no interest, direct or indirect, in the claim at issue, and am in no way related to the claimant.

Interrogatories by attorneys for claimant:

Interrogatory 1. Are you or not acquainted with the parties, or either of them, in the above cases?

Answer. I am not acquainted with either of the parties.

Interrogatory 2. Were you or not acquainted with Samuel G. Cabell?

Answer. I was acquainted with the said Samuel G. Cabell when he came here after cotton.

Interrogatory 3. In what capacity was the said Cabell acting when you made his acquaintance?

Answer. He was acting as United Treasury agent, and my first meeting him in that capacity was in October, eighteen hundred and sixty-five.

Interrogatory 4. Do you or not know of the said Cabell seizing or taking, or causing to be seized or taken, any cotton in the State of Florida, in the years eighteen hundred and sixty-five or eighteen hundred and sixty-six, or at any other time? If yea, state whose cotton it was before said seizure, and by whom it was bought, and from whom; how many bales were so seized, and what were their marks and weights?

Answer. I remember of the said Cabell seizing some cotton that I had sold to a Mr. Cheever, agent of G. B. Lamer. Cheever, as agent aforesaid, purchased from me eighty-two bales of sea island cotton, which were delivered in the year eighteen hundred and sixty-two. In the year eighteen hundred and sixty-three, the said Cheever, as agent aforesaid, purchased from me sixty-two hundred sixty-two pounds of sea island cotton. This was packed in twelve bales, like short staple cotton. I do not recollect the mark.

172 [69] Interrogatory 5. State to whom you delivered said cotton, or what became of it, and as whose property was it delivered or given up, and to whom?

Answer. The first lot of eighty-two bales referred to in my preceding answer I delivered at the depot in Tallahassee to Mr. W. W. Cheever and George N. Cheever, who were the agents of G. B. Lamar, but I don't know what disposition was made of said cotton after it reached the depot. The other lot I also sold to the agents of G. B. Lamer. It consisted of thirty-two bales of sea island cotton; twenty bales I delivered at the depot in Tallahassee, and these were sent off to Mr. Lamar. There were left six thousand two hundred and sixty-two pounds, which were on my plantation. This was seized by Samuel G. Cabell as Lamar's cotton. I ginned, packed, and baled it at the written order of said Cabell, and, as he hurried me, I packed it with a screw in twelve bales. These twelve bales of sea island cotton having been seized by the said Cabell, as United States Treasury agent, were carried to the depot in Tallahassee.

Interrogatory 6. If you answer that Cabell seized any cotton belonging to G. B. Lamar, state if you know what disposition the said Cabell made of said cotton.

Answer. I do not know what disposition Cabell made of the cotton seized by him.

Interrogatory 7. What was the general character of said Cabell for truth and veracity?

Answer. I do not know.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I know of nothing else in connection with this matter than what I have previously stated.

GEO. A. CROOM.

The deposition of Smith Simkins, for claimant, taken at Tallahassee, Fla., on the 27th day of August, 1872.

First general interrogatory by commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Smith Simkins; occupation, merchant and planter; age, fifty-three; residence, Monticello, Fla.; have no interest, direct or indirect, in the above claim, nor am I in any way related to the claimant.

Interrogatories by attorneys for claimant:

Interrogatory 1. Are you not acquainted with the parties or either of them in the above case?

Answer. I am acquainted with G. B. Lamar.

Interrogatory 2. Were you or not acquainted with one Samuel G. Cabell; and if you knew him, at what time, and in what capacity was he acting?

Answer. I was acquainted with Samuel G. Cabell. I knew him in 1863, and from that time to the close of the war. I knew him as the agent of G. B. Lamar; that is, I supposed that he was G. B. Lamer's agent, as he was inquiring for G. B. Lamar's cotton.

173 [70] Interrogatory 3. Do you or do you not know of the said Cabell seizing or taking, or causing to be seized or taken, any cotton in the State of Florida in year eighteen hundred and sixty-five? If yea, state whose cotton it was before seizure by Cabell, from whom it was purchased before seizure, and by whom it was bought; how many bales so seized, and what were their marks and weights.

Answer. I know of the said Cabell seizing, in the year eighteen hundred and sixty-five, the following lots of cotton: Twenty-three bales from the Parkill estate, weighing twelve thousand one hundred and fifty-four pounds, one marked "P," which lot I sold to Lamar, the claimant, in March, eighteen hundred and sixty-three; another lot of twenty-five bales, belonging to G. A. Bailey, marked "G," weighing on an average of five hundred pounds to each bale, which lot I also sold to the claimant, Lamar, in March, eighteen hundred and sixty-three.

Interrogatory 4. If you answer that Cabell seized any cotton, state whose cotton it was and how you knew or identified said cotton, and whether Cabell seized said cotton as the property of any particular individual, and what individual.

Answer. I knew the cotton because I sold it to G. B. Lamar or his agent, and it was in my possession until Cabell sent for it. I recognize the cotton by the marks described in my answer to the preceding interrogatory.

Interrogatory 5. Did you or not sell any cotton to G. B. Lamar or his

agent, and what agent, at any time prior to the year eighteen hundred and sixty-five? If yea, state specifically to whom and how many bales.

Answer. I sold other cotton than that mentioned in answer to previous interrogatory. The sale was made to Mr. Chever, as agent for Lamar, the claimant. I do not recollect the number of bales and weights. It was sold some time in the year eighteen hundred and sixty-three.

Interrogatory 6. Did you or not receive any instructions from Samuel G. Cabell about said cotton or its delivery, and to whom did you deliver it, and as whose property?

Answer. I received written instructions from the said Cabell to deliver said cotton at Monticello, but refused to deliver as aforesaid until a bill of charges was paid. Said Cabell then came and seized said cotton as the property of G. B. Lamar and carried it off.

Interrogatory 7. Do you or not know what disposition the said Cabell made of the cotton so seized by him?

Answer. I do not know, but understand that the seizure was made for the United States Government.

Interrogatory 8. Do you or not know the general character of the said Samuel G. Cabell for truth and veracity?

Answer. I know the general character of said Cabell for truth and veracity. It was not good.

Interrogatory 9. From the general character of said Cabell, would you or not believe his statements under oath?

Answer. I don't think I would believe him under oath where he was interested.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

S. SIMKINS.

174 [71] *The deposition of B. W. Bellamy, for claimant, taken at Tallahassee, Fla., on the 27th day of August*, 1872.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Burton W. Bellamy; occupation, a planter; age, forty years; place of residence, Jefferson County, Fla. I have no interest, direct or indirect, in the claim which is the subject of this inquiry, and am in no way related to the claimant.

Interrogatories by attorneys for the claimant:

Interrogatory 1. Are you or not acquainted with either of the above parties in this case?

Answer. I am acquainted with G. B. Lamar.

Interrogatory 2. Were you or not acquainted with one Samuel G. Cabell, and at what time, and in what capacity?

Answer. I knew Samuel G. Cabell, but not until after the war, when he professed to be United States assistant Treasury agent.

Interrogatory 3. Do you or not know of said Cabell seizing any cotton in the year eighteen hundred and sixty-five? If yea, state whose cotton, from whom bought before seizure, how many bales, and their weights and marks.

Answer. I know of Cabell's seizing cotton in the year eighteen hundred and sixty-five. He seized fifty-six bales of my cotton, marked "B. W. B.," and weighing on an average five hundred pounds each. This cotton I had previously sold to Lamar, the claimant, and it was then in my possession when seized.

Interrogatory 4. Did you or not sell any other cotton to G. B. Lamar, or his agent, prior to the year eighteen hundred and sixty-five? If yea, state number of bales, weight, and marks.

Answer. I sold no cotton to Lamar or his agent, prior to the year eighteen hundred and sixty-five, except the lot including the fifty-six bales mentioned in previous answer. I sold Mr. G. B. Lamar three hundred and five bales, averaging five hundred pounds each in weight, and marked "B. W. B.," all of which were delivered at station No. 17, A. & G. R. R., except the fifty-six bales mentioned in previous answer.

Interrogatory 6. Did you or not receive any instructions from Samuel G. Cabell in regard to the cotton sold to the claimant?

Answer. I received a letter from Samuel G. Cabell ordering me to deliver the cotton at station No. 4, D. & G. R. R., stating that the cotton belonged to United States Government.

Interrogatory 7. From the general character of said Cabell for truth and veracity, would you believe him on oath?

Answer. I would not.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

BURTON W. BELLAMY.

175 [72, 73] United States Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

EVIDENCE FOR CLAIMANT.

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Deposition of A. S. Lawson..... page 3

176 [74, 75] *The deposition of Adam S. Lawson, for claimant, taken at New York City, on the 18th day of November,* 1872.

First general interrogatory by the commissioner. Please state your name, your age, your occupation, your residence during the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; whether you are related to the claimant, and, if so, in what degree.

Answer. My name is Adam S. Lawson. I am a little over forty-five

years old; I am a book-keeper; my residence, during the past year, New York City; I have no interest, direct nor indirect, in this claim; I am in no way related to the claimant.

The witness was examined in behalf of the claimant, by written interrogatories:

First interrogatory. State whether you are acquainted with the handwriting of W. J. Anderson; and if so, when and how you acquired your knowledge of it.

Answer. I am perfectly familiar with Mr. Anderson's handwriting. During the years 1862 and 1863 I was book-keeper for the claimant, G. B. Lamar, in Savannah, and during that period numerous invoices and letters from W. J. Anderson passed through my hands, as book-keeper, and I thereby became acquainted with his handwriting and signature.

(Exhibit A shown witness.)

Second interrogatory. Look at the invoice of one hundred and twenty-nine bales cotton herewith, and say whose signature is attached to the invoice and the letter attached to it.

Answer. The signature is of W. J. Anderson; the invoice and letter is in his handwriting.

Being cross-examined by SAMUEL HUNTINGTON, Esq., counsel for the Government, the witness states:

Cross-interrogatory. Did you ever see Mr. Anderson write?

Answer. I never saw him write.

Cross-interrogatory. How did you know that the letters and invoices you have mentioned came from him?

Answer. We were in the habit of sending guano to him for sale, and in return we received from him the notes of planters, and cotton, and these invoices accompanied the cotton sent in return.

Second general interrogatory by the commissioner. Do you know any other matter relative to the claim in question? If so, state it.

(Objected to by the counsel for the United States, on the ground that the witness is, according to a stipulation between the parties hereto, to be examined only in regard to the signature before mentioned.)

Answer. I know nothing more except as I have before testified.

A. S. LAWSON.

EXHIBIT A.—H. W. FOWLER, *Com'r C't Claims.*

C. A. L. Lamar, in acc't with Wm. J. Anderson.

1861.							
Oct'r 26.	To 6 bales cotton,	3,416 lb.,	marked (L),	8c...		*$273	38
	1 " "	530 "	" "	8.....		†42	80
Nov. 13.	" 1/ 2 " "	931 "	" "	8, 1/		78	48
177 [76]	" " 14 " "	7,536 "	" J. W. Belvin,	8, 1/		602	88
18.	3 "	1,370 "	" G. S. H.,	8, 1/...		109	60
	2 "	880 "	" do.	8, 1/...		70	40
23.	5 "	2,521 "	(L),	8, 1/.....		201	68

* 272 28. † 42 40.

27.	1/8	"	4,695 "	do., 8, 1	375 60
Dec'r 3.	7	"	3,141 "	do., 8, 1	251 28
24.	1/6	"	2,471 "	1 G. B., 8.....	*197 68
Jan'y 2.	1/11	"	5,488 "	1 W. A. N., 8,.....	439 04
Feb'y 24.	1/9	"	3,657 "	1 (M), 7½.....	274 27
Jan'y 25.	1/6	"	3,222 "	1 H., 7½.....	241 65
" "	1/8	"	4,465 "	1 (F), 8c.....	357 20
" 26.	1/3	"	1,660 "	1 G. B. L., 8	132 80
Mar. 2.	8	"	3,685 "	P. B. D. Cutter, 8,1	204 80
" 2.	"10	"	4,666 "	A. B., 8, 1	389 28
" 3.	" 4	"	2,244 "	(O) J. H. H., 8,1 ...	179 52
" "	" 6	"	3,324	" J. V., 8,1	265 92
" "	" 4	"	2,295	" E. L. F, 8.....	†183 60
Dec'r 6.	" 6	"	‡2,537	J. McM., 8, 1	204 08
	129		64,734		$5,165 94
			10. 11. 7		11. 10. 10. 8

FORT VALLEY, *Nov'r* 30, 1863.

Mr. G. B. LAMAR :

D'R SIR : Above you have an invoice of 129 bales cotton, dated just as I bo't it, all of which I sent you before—Feb'ry 27, 1862. I sent an invoice of ninety-one bales cotton, & the warehouse rece'pts with them. On March 11th I sent an invoice, 38 bales cotton, & warehouse rece'pts with them, & have not bo't any since. Cotton has advanced, and I was not authorized to *to* pay any more than 8 c. Mess. Wm. Battersby informed me that they had bo't 80 of the above bales cotton, which leaves 43 bales cotton here & 6 in Macon, which your rece'pts will show.

Respectfully,

WM. J. ANDERSON.

	1,746	
	35	31 S. I.
	9	60 S. I.
		28 S. I.
Upland.....	1,790 bales.	20 S. I.
S. island	167	22 S. I.
S. island.....	32	6 S. I.
	1,989	167 S. I.

1,790 upland.
199 S. I.

1,989

* Sold 8 bales 15 Dec., 1864 = 3,992 lbs., 204 08.
† 175 60. ‡ 2,551.

178 [77, 78] (On back:) W. J. Anderson. Inv., 129 bales cotton. Nov. 30, 1863. J. 467.

48=25,070 lbs.
38=18,865

43,935
3,992 8 bales sold

39,943

C C 32		476		Ⓗ	14	
17		510	gone.			
29		484				
46		540	W A M	Ⓦ	15 1	
13		508	1			
28		506	1	Ⓗ	6	
30		480	1			
56		520	1	Sold Blum	15	
35		504	1	& Meyer.	0	
61		466	1		0	Sold Blum
9		472	1		0	& Meyer.
15	John Elkue.	578	1		45	
11		484			0	
51		520			16	
34		536		C C	1	
50		530			27	
45		520			0	
23		456			10	
41		520			2	
41		520		Ⓗ	300 13	
0		506		"	12	
45		520				

11,156
2,789
13,945

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180 [81] *Deposition of A. L. Lawson, for claimant, taken at Washington, D. C., on the 27th day of November*, 1872.

Examination by CHARLES F. PECK, Esq., counsel for claimant:

Question. State your present residence, and whether you are the same Mr. Lawson who previously testified in this case.

Answer. My place of business at present, No. 64 Pine street, New York City. I testified previously in this case.

Question. Referring to your former deposition, in which you state that W. W. Cheever and Charles A. L. Lamar are both dead, I ask you when they died?

Answer. Mr. Cheever died in 1863. Charles A. L. Lamar was killed toward the end of the war of the rebellion. I cannot state the month.

Question. In your last deposition you stated the interest which Mr. Cheever had in these cotton transactions. Will you state what interest Charles A. L. Lamar had?

Answer. He was simply to have an interest in the profits, if any.

Question. Does that interest relate to all the cotton testified to by you as having been purchased by Mr. Lamar, claimant?

Answer. No; he did not have an interest in the whole of it. He only had an interest in a portion of it.

Question. Did Charles A. L. Lamar have any independent interest in any of it?

Answer. No, sir; he did not.

Question. When Mr. Cheever undertook the purchase of cotton for Mr. Lamar, testified to, what were his pecuniary circumstances?

Answer. Mr. Cheever was bankrupt before starting in this purchase of cotton. He was shipping guano for Mr. Lamar. He was in no business for himself. He was bankrupt.

Question. At the time of his death, what was the condition of his account with Mr. Lamar, the claimant? Was he indebted to him or not?

(Question objected to by William McMichael, esq., counsel for the United States.)

Answer. He was largely indebted to him. Mr. Cheever died very suddenly, and in closing up his account we found an indebtedness on his part to Mr. Lamar of over $50,000, which we could not account for.

Question. On page 63, of the printed testimony, in this case, containing your former examination, is a statement that Mr. Cheever purchased 5,768 bales of cotton for Mr. Lamar. Then followed a statement that 2,500 bales were sold to the Georgia Importing and Exporting Company; after which is the following question and answer, to which I wish to call your attention: "Q. I ask you if any of this cotton belonged to the Georgia Importing and Exporting Company?—A. Not that I know of."

Answer. This was a sale. The Georgia Importing and Exporting Company had nothing to do with the original purchase. Of course, after the sale they owned it.

Question. At the time Mr. Cheever entered upon these purchases for Mr. Lamar, was he indebted to Mr. Lamar; and, if so, in what amount?

(Question objected to by counsel for the United States.)

Answer. He was largely indebted to Mr. Lamar beyond the $50,000 I have referred to, which was an indebtedness incurred in the purchase of cotton.

181 [82] Question. Did this indebtedness exist before he undertook these purchases?

Answer. It did.

Question. To what amount?

Answer. To a very large amount. I could not state the exact figures. He was very largely indebted to Mr. Lamar, and had been for years.

Question. Could you not state it more definitely than that?

Answer. Really, it is nine years since I looked at these books of the claimant. I do not know as I could specify the amount exactly.

Question. Was it over $100,000?

Answer. It was considerably over that.

Question. Would the books of the claimant show the amount?

Answer. Yes; the books would show the amount.

Question. Prior to November, 1863, when you say you left Savannah, what relation did you hold to the claimant, and to Charles A. L. Lamar?

Answer. I had been book-keeper for Charles Lamar. Afterwards I was book-keeper for claimant. I was also book-keeper in the bank of which Mr. Lamar, the claimant, was president, as I have testified to before.

Question. Please examine the two receipt-books I now hand you, and state whether you ever saw them before. If so, what use you saw made of them, and by whom?

Answer. I recognize the first one you hand me as Mr. Lamar's receipt book, which he used in the regular course of business. The second one is also a receipt-book, but it refers to a date subsequent to that at which I left Mr. Lamar's employ.

Question. Will you please write your name upon the inside cover of each of these books for the purpose of identifying them?

Answer. I have done so, and marked the first one "A," and the second one "B."

Question. State whether, after you returned to Savannah, you had any relations with the claimant; and if so, what?

Answer. I wrote up his books on one or two occasions after the war. He did not require my services all the time, but I posted his books and balanced them several times.

Question. Please look at page 10 of the small receipt-book, marked "A," and state whether you know the signature of L. M. Hamilton?

Answer. I do.

Question. Have you seen him write?

Answer. I have seen him write.

Question. Do you identify the signature after the receipt for freight, on the page referred to as his signature?

Answer. I do.

Question. At the time indicated, what was Mr. Hamilton's position?

Answer. He was collector for the Savannah, Albany and Gulf Railroad.

Question. Was the title of that railroad afterward changed; and if so, to what?

Answer. I believe it is changed to the Atlantic and Gulf Railroad now.

Question. Did you, about that time, transact business with that road?

Answer. Yes, sir.

Question. Who was in the habit of signing receipts for freight for that road at that time?

182 [83] Answer. Mr. Hamilton was.

Question. Please look at page 19 of the same book, and state whether you know the handwriting of James A. Courvisie?

Answer. I do.

Question. Have you seen him write?

Answer. Many a time.

Question. Do you recognize the signature to the receipt on the upper half of the page referred to, as his signature?

Answer. I do.

Question. What was Mr. Courvisie's position at that time?

Answer. He was treasurer of the Central Railroad Company.

Question. Were you acquainted with the course of business of that railroad company at that time?

Answer. Yes, sir.

Question. Who was in the habit of giving receipts for freights passing over that railroad at that time?

Answer. Principally, Mr. Courvisie.

Question. Where were these two railroads you have spoken of—what points did they run from and to, with reference to Savannah?

Answer. The Central Railroad ran from Savannah to Macon.

Question. Did it have a branch to Augusta?

Answer. Oh, yes. It had a branch to Augusta. The Atlantic and Gulf Railroad ran from Savannah to Thomasville.

Question. Did these roads have any connections?

Answer. The Central connected with the southwestern road at Macon. The other road had no connection that I remember. It was a straight road to Thomasville.

Question. Turn to page 21 in that book and state whether you know the handwriting of W. W. Cheever.

Answer. I do, perfectly.

Question. Have you seen him write?

Answer. I have.

Question. See if you can identify the three signatures on that page?

Answer. I can. I should say they are genuine.

(Counsel for the United States objects to the introduction of, or any proof in regard to these receipts.)

Question. Turn to page 31 of the same book, and state whether the signature of Mr. Cheever on the lower half of the page is identified by you as his genuine signature.

Answer. Yes, sir; that is his genuine signature.

Question. Turn to page 35, on the upper half of the page, and say whether you identify Mr. Hamilton's signature.

Answer. I do.

Question. State whether you identify Mr. Hamilton's signature on the lower half of page 36, as genuine?

Answer. I do.

Question. On page 37, state whether you recognize the signature of Mr. Courvoisie?

Answer. Yes, I recognise that as his genuine signature.

Question. On page 65, do you identify Mr. Courvisie's signature, on the lower half of the page as genuine?

Answer. Yes, sir, I do; and also on page 68.

Question. Please examine the large receipt-book, marked "B," page 6, at the bottom of the page, and say whether you identify the signature of Mr. Courvisie as a genuine signature?

Answer. I do.

183 [84] Question. According to the course of business over these railroads, were these freights paid before or after the goods to which they refer passed over the road.

Answer. A few days after the goods had been delivered in Savannah.

Question. How long have you known the claimant, Lamar?

Answer. Since 1860.

Question. I will ask you whether Mr. Lamar was ever a civil or diplomatic officer or agent of the confederate government?

Answer. He was not.

Question. Did he ever leave any judicial station under the United States Government to aid the rebellion?

Answer. He did not.

Question. Did Mr. Lamar, the claimant, ever hold any military or naval rank under the Confederate Government?

Answer. He did not of any description.

Question. Did he ever leave a seat in the United States Congress, to aid the rebellion.

Answer. He did not.

Question. Did he resign any commission in the Army or Navy of the United States, to aid the rebellion?

Answer. He did not.

Question. Did he ever treat colored persons, or white persons in charge of such, otherwise than lawfully, as prisoners of war, such persons being in the United States service as soldiers, seamen, or in any other capacity?

Answer. He did not.

Question. Were your relations to him such that if he had done any of these things you would have known it?

Answer. I certainly would have known it.

Question. Please state whether in the books, receipts, accounts, &c., the property of Mr. Lamar and the property of the Georgia Importing and Exporting Company was always kept separate or not, and whether said books and papers identify the property of each separately.

Answer. Yes, they were always kept separate, and the books and papers show such to be the case.

Question. Was there a cotton-book kept for each?

Answer. Yes, sir; there were separate books.

(The counsel for claimant stipulates that counsel for the United States may recall witness for cross-examination.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. Nothing of importance occurs to me now, except as I have previously testified.

A. L. LAWSON.

The deposition of William H. Bennett, for claimant, taken at Washington, District of Columbia, on the 4th day of December, A. D. 1872.

First general interrogatory by the commissioner. Please to state your name, age, residence during the past year; your occupation, and whether you have any interest, direct or indirect, in the claim which is the subject of inquiry in this suit, and whether and in what degree you are related to the claimant.

184 [85] Answer. My name is William H. Bennett. My age is thirty-two. My occupation is book-keeper. My residence the past year has been Savannah, Georgia. I have no interest, direct nor indirect, in the claim which is the subject of inquiry in this suit, and I am in no degree related to the claimant.

Examined by CHARLES F. PECK, counsel for claimant:

Question. Look at the two books I now present you, marked "A" and "B," over the signature of A. L. Lawson, and state if you ever saw these books before, what they are, and what use has been made of them.

Answer. I have seen them, and know them to be the receipt-books of Mr. Lamar, the claimant, in which he took receipts for money paid out.

Question. Were these two books used by him in the ordinary course of business in Savannah?

Answer. In the ordinary course of business; yes, sir.

(Counsel for the United States objects to the reception in evidence of any of the receipts referred to in the books A and B, and objects to any testimony in relation thereto.)

Question. How long have you been acquainted with the claimant?

Answer. I have had business transactions with him since 1863. I knew him a long time before that. I do not recollect the date when my acquaintance commenced.

Question. Did you know W. W. Cheever in his life-time?

Answer. I did.

Question. Have you ever seen him write?

Answer. Many a time.

Question. Are you familiar with his signature?

Answer. Yes, sir.

Question. Examine page 7, of the book just identified by you, marked "A," and state if you identify the signature of Mr. Cheever on that page.

Answer. Yes, sir; that is his genuine signature.

Question. Please to examine the signatures on page 9, book A, and state whether they are genuine or not.

Answer. They are the genuine signatures of W. W. Cheever.

Question. Do you know L. N. Hamilton?

Answer. Yes, sir.

Question. Did you ever see him write, and are you familiar with his signature?

Answer. I have seen him write often, and I am familiar with his signature.

Question. In 1862 what was Mr. Hamilton's position?

Answer. He was collector of freights, I think, for the Atlantic and Gulf Railroad, in Savannah.

Question. What was Mr. Hamilton's duty in reference to giving receipts for freight?

Answer. It was his duty to give receipts for all freights collected by him for the company. He was the only collector for the company at that time, as I remember.

Question. Look at page 10, book A, and see if you identify Mr. Hamilton's signature.

Answer. That is his genuine signature.

Question. Do you know J. Stoddard?

Answer. I do.

Question. Have you seen him write, and are you familiar with his signature?

185 [86] Answer. I have seen him write frequently, and am familiar with his signature.

Question. Examine this receipt-book A, page 13, and state whether you identify Mr. Stoddard's signature there.

Answer. I do; that is his signature.

Question. Look at page 14 of the same book and see whether you identify the signature.

Answer. Yes, sir; that is L. N. Hamilton's genuine signature.

Question. Look at page 16, and state if you identify the signature on the middle of the page.

Answer. I do; the one on the middle of the page is W. W. Cheever's signature, and that at the bottom is L. N. Hamilton's.

Question. Look at page 18, same book, and state if you identify the signature to the first receipt on that page.

Answer. I do; that is the signature of L. N. Hamilton.

Question. Look at page 21, and see if you identify the signatures of the first three receipts.

Answer. Yes, sir; the first three have the genuine signature of W. W. Cheever.

Question. Do you know the firm of Hawkins & Co.?

Answer. Yes, sir; they were draymen.

Question. Do you know J. H. Williams?

Answer. Yes, sir; he was their clerk, and transacted the business for them in the office, I think.

Question. Do you know Mr. Williams's signature?

Answer. I do.

Question. Look at page 22, at the middle of the page, and see if that is Mr. Williams's genuine signature.

Answer. That is his genuine signature.

Question. Look at page 23, book A, and state if you identify the signature of the first receipt on that page.

Answer. Yes, sir; that is the signature of J. H. Williams.

Question. Look at the last receipt on page 31, same book, and state whose signature it is.

Answer. That is the signature of W. W. Cheever.

Question. Did you know John S. Daniel in his life-time?

Answer. I did.

Question. Have you ever seen him write, and are you familiar with his signature?

Answer. I have frequently seen him write, and am very familiar with his signature.

Question. Look at the last receipt on page 34, book A, and see if you identify the signature.

Answer. Yes, sir; that is the genuine signature of Mr. Daniel.

Question. Look at page 35, book A, and state if you identify the signature of the first receipt.

Answer. I do; it is the signature of L. N. Hamilton.

Question. Look at the last receipt on page 36.

Answer. The signature to that is also Mr. Hamilton's.

Question. Did you know James A. Courvisie?

Answer. I did, intimately.

Question. Have you ever seen him write, and do you know his signature?

Answer. I saw him write, I suppose, forty times a day for four years.

Question. Examine the first receipt on page 37, book A, and state whose signature is attached to it.

186 [87] Answer. That is Mr. Courvisie's signature.

Question. What is the significance of the letters at the end of his signature?

Answer. That is a way he had of signing "tr." for treasurer.

Question. What was Mr. Courvisie's position at the time?

Answer. He was treasurer at that time of the Central Railroad.

Question. What were his duties as treasurer of that road, in connection with freight receipts?

Answer. His duties were to collect all money for freights coming over the Central and connecting roads, payable in Savannah, and to receipt for them.

Question. Look at page 65, book A, and state if you recognize the signature of the receipt at the bottom of that page.

Answer. Yes, sir; that is the signature of James A. Courvisie.

Question. Look at page 2, book B, before identified by you, and state if you recognize the signature of the third receipt on that page.

Answer. Yes, sir; that is the signature of A. F. Bennett, jr., who is a brother of mine.

Question. At that time what was A. F. Bennett's position, in relation to the Atlantic and Gulf Railroad?

Answer. He was a clerk. His business was to help everybody. We sent him out collecting a good deal. I suppose he might be termed an assistant collector.

Question. In that capacity did he sign receipts for the railroad company?

Answer. He did.

Question. I ask you if, in June, 1864, you knew T. A. Goodwin?

Answer. I did.

Question. What was his business?

Answer. He was drayman. He bought N. Hawkins's dray business, and retained J. H. Williams in it.

Question. Look at the receipt on page 4, book B, and state whether you recognize the signature.

Answer. I do; it is J. H. Williams's signature.

Question. Look at page 5, same book, and state whose signatures are attached to the three receipts.

Answer. The first and last are those of my brother, A. F. Bennett, jr.

Question. What do the letters at the end of his signature indicate?

Answer. The letters are "jr." for junior.

Question. Look at the last receipt on page 6.

Answer. The signature to that is James A. Courvisie.

Question. Look at pages 8 and 9, book B, and state whose signatures you recognize.

Answer. The first is my own.

Question. State what was your position at that time.

Answer. I was then collector for the Atlantic and Gulf Railroad Company.

Question. What was your duty in reference to giving receipts for freight?

Answer. My duty was to collect all freights and receipt for them.

Question. Was your brother, concerning whom you have testified, under your direction?

Answer. He was under my direction at that time.

Question. Look at the receipt following the one you have just testified to.

187 [88] Answer. That is the signature of J. H. Williams, in the employ of the firm of T. A. Goodwin & Co.

Question. Look at the first receipt on page 10, book B, and state whose it is.

Answer. The signature to the first two receipts are mine.

Question. Whose is the last on that page?

Answer. The last receipt is my brother's.

Question. Look at the third receipt on page 11.

Answer. The signature to that is my brother's.

Question. Examine the next receipt on page 11.

Answer. That is J. H. Williams's signature.

Question. Examine the first receipt on page 12, same book.

Answer. The first and second are my brother's signatures.

Question. Whose signature is attached to the last receipt on page 12?

Answer. C. H. Campfield's.

Question. Do you know Mr. Campfield's signature? Have you seen him write?

Answer. I know it well. I have seen him write frequently.

Question. What was his position in relation to the firm of A. Hardee & Co.?

Answer. I do not know exactly. He was book-keeper or cashier, or perhaps both.

Question. Examine the first receipt on page 14.

Answer. That is the signature of J. H. Williams.

Question. Examine the second receipt on the same page.

Answer. The second is mine.

Question. Examine the receipt on page 15, at the top of the page.

Answer. That is the signature of J. Stoddard.

Question. Examine the next receipt on same page.

Answer. The next is my brother's receipt; the third is that of Mr. Cavourisie; the fourth that of J. H. Williams.

Question. Were you acquainted, at the time indicated by these receipts, with the manner in which these two railroads spoken of conducted their business in Savannah?

Answer. Yes, sir.

Question. What was their usage in regard to the payment of freights—when were they paid?

Answer. The freights were paid after the delivery of the goods to responsible parties. If parties were known not to be responsible they were collected on delivery.

Question. Were freights ever collected before they were received in Savannah?

Answer. No, sir; unless the shipper preferred to prepay the freight. It was customary at Savannah to collect them at the point of destination.

Question. Were the receipts you have testified to as being given by yourself given in the ordinary course of business, upon the payments indicated in them?

Answer. Yes, sir.

Question. What connections did the Atlantic and Gulf Railroad have?

Answer. No railroad connections. It ran from Savannah to Thomasville, and connected by wagon-trains with the Pensacola and Georgia Railroad, which runs from Quincy to Lake City.

Question. Are the receipt books you have examined this morning the same referred to in your testimony formerly taken in this case?

Answer. Yes, sir; I believe they are the same.

188 [89, 90] Cross-examination by JAMES H. MCCAMMON, counsel for the United States:

Question. How long were you in the employment of the Atlantic and Gulf Railroad?

Answer. I was there for a short time in 1861. I left after six or eight months. I went back in 1862, and remained until the evacuation of the city. In fact, I have been in their employment ever since.

Question. Do you know of the existence of the Georgia Importing and Exporting Company?

Answer. Yes, sir.

Question. Can you state who was president of that company?

Answer. To the best of my knowledge G. B. Lamar was president of it.

(Counsel for claimant stipulates that the witness may be recalled for further cross-examination if counsel for the United States shall so desire.)

Second general interrogatory by the commissioner. Do you know of any other matter relative to the cause in question? If you do, state it.

Answer. Nothing further occurs to me.

W. H. BENNETT.

189 [91, 92] United States Court of Claims.

S. G. CABELL
vs.
THE UNITED STATES. } No. 3292.

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190 [93] In the Court of Claims.

SAMUEL G. CABELL
vs.
THE UNITED STATES. } No. 3292.

The claimant asks the court for a rule or request upon the Treasury Department for copies of all papers, letters, and returns of J. H. Alexander, assistant special agent of the Treasury Department for the ninth district, and also all such papers, letters, and returns of William H. Nobles, acting assistant special agent Treasury Department, ninth district, showing the appointment of Samuel G. Cabell, as assistant in said agency, and authorizing him to seize and collect confederate and confiscable property.

And also copies of all letters, vouchers, returns, bills of lading, showing the number of bales of cotton seized by said Cabell, and shipped to Simeon Draper, agent of the United States at the city of New York.

Also the returns of sales of said cotton by said Draper, if kept separate, if not, then a general return of cotton shipped to said Draper from Florida in the year 1865 and 1866, and the net proceeds of the same.

And also a copy of an appointment by Hugh McCulloch, Secretary of the Treasury, to S. G. Cabell, dated in November, A. D. 1865, authorizing and empowering the said Cabell to collect and ship all captured and confederate and confiscable property in the ninth district, comprising Florida and part of the State of Georgia.

And also the settlements, warrants, and vouchers of payments made to said Cabell for and on account of expenses and costs in seizing and collecting and shipping cotton in and from said district.

Respectfully submitted.

BARTLEY & CASEY,
Attorneys for Claimants.

(Indorsed:) No. 3292. Samuel G. Cabell vs. The United States. Request for information from Treasury Department. Filed and issued March 2, 1871. Allowed 2d March, 1871. E. Peck, judge. Bartley & Casey.

UNITED STATES OF AMERICA:

3292.] TREASURY DEPARTMENT.

In pursuance of the act of Congress of 22d of February, 1849, relating to the certification of records under seal by the Secretary of the Treasury, and of the act of February 24, 1855, section 13, empowering the United States Court of Claims "to call upon any of the Departments for any information it may deem necessary," and whereas the last provision of the above-named section, to wit: that the head of no Department shall answer any call for information or papers if, in his opinion, it would be injurious to the public interest, is in nowise violated by the transmission of the annexed information: therefore, on this 31st day of May, in the year A. D. one thousand eight hundred and seventy-one, the Secretary of the Treasury of the United States, in answer to the rule of the above-named Court of Claims dated March 2, 1871, submits the following transcripts of

191 [94] original papers and records as being the information now on file in his office touching the matters inquired of by said rule in the cause of Samuel G. Cabell vs. The United States, to wit:

I. Petition of S. G. Cabell, Nov. 14, 1865, and accompanying copies of exhibits.

II. Answer of Secretary of Treasury, November 17, 1865.

III. Response of S. G. Cabell, November 18, 1865.

IV. Report of S. G. Cabell, December 11, 1865.

V. Letter from Secretary of Treasury to Cabell, December 29, 1865.

VI. Letter from Secretary of Treasury to Hughes, Denver & Peck, January 16, 1866.

VII. Report of S. G. Cabell, February 17, 1866.

VIII. Abstract of expenditures.

IX. Report of S. G. Cabell, February 27, 1866.

X. Abstract of expenditures.

XI. Account sales—177 bales cotton.

XII. Account sales—95 bales cotton.

XIII. Letter from Secretary Treasury to Simeon Draper, May 4, 1866.

XIV. Draft of Hughes, Denver & Peck.

XV. Letter from S. Draper to Secretary Treasury, May 7, 1866.

XVI. Letter from Secretary Treasury to commissioner of customs, May 25, 1867.

XVII. Basis of settlement—S. G. Cabell's claim.

XVIII. Power of attorney from S. G. Cabell to George P. Este.

XIX. Receipt of George P. Este, attorney for S. G. Cabell.

XX. Draft of F. E. Spinner.

XXI. Letter from Francis Robinson to Secretary of Treasury, May 30, 1867, and accompanying bills of lading.

[SEAL.] GEO. S. BOUTWELL;
Secretary of the Treasury.

(Copy. A. B.)

I.

IN THE MATTER OF COMPENSATION CLAIMED by Samuel G. Cabell, acting aid to assistant special Treasury agent, 9th special agency.

NOVEMBER 14TH, 1865.

The petition of Samuel G. Cabell, a loyal citizen of the United States, and a resident of Quincy, Adams Co., Illinois, represents that A. H. Alexander, then acting as assistant supervising special agent of the United States Treasury Department for the ninth (9th) special agency, under the regulations of said department for the collection of captured and abandoned property in the disloyal States, on the twenty-second (22d) day of July, A. D. 1865, appointed your petitioner acting aid to assistant special Treasury agent for the district of Florida, to collect and receive all the cotton, tobacco, and other property belonging to the United States, a copy of which appointment is hereto annexed, and marked Exhibit "A;" and, on the same day, the said Alexander gave your petitioner instructions in

writing relative to his duties, a copy of which is hereto annexed, and marked Exhibit "B."

While executing the duties required of him by the aforesaid appointment and instructions, your petitioner received a communication from the said Alexander, directing him to report in person to receive
192 [95] further instructions and authority under the regulations of the Treasury Department, a copy of which communication is hereto annexed, and marked "Exhibit C;" and, on the 25th of August, A. D. 1865, your petitioner received from the said Alexander further instructions and authority, a copy of which is hereto annexed, and marked "Exhibit D," by which your petitioner was required to resume the collection of Government cotton and other property, and his district was extended so as to include within its limits the southern tier of counties of Georgia, lying between the Suwanee and Chattahoochie Rivers. Your petitioner further avers that, in pursuance of the authority and instructions given him as aforesaid, he proceeded at once in good faith to execute the duties devolved upon him, and in every way to subserve the best interests of the Government within the scope of the powers confided to him, and that he, in all respects, conducted himself as an efficient and honest public servant.

That, in the performance of his said duties, and under the authority before referred to, your petitioner, on the first (1st) day of September, A. D. 1865, discovered and seized in behalf of the United States the following parcels of cotton, to wit: A lot of seventy-three (73) bales, then in possession of F. M. Robinson, on his plantation, about fourteen miles west of the town of Thomasville, State of Georgia; a lot of one thousand and ninety-nine (1,099) bales in the warehouse of Evans & Parnell, storage and commission merchants in the said town of Thomasville; and, on the eighth (8th) of September, A. D. 1865, another lot of from three (3) to five hundred (500) bales in another warehouse of the said Messrs. Evans & Parnell, in said town of Thomasville.

And your petitioner shows that all of said cotton was seized by him within the limits of the district confided to him by the said instructions of August 25th, 1865.

That about the 15th of August, 1865, your petitioner seized, as aforesaid, the following lots of cotton in the counties of Leon and Madison, in the State of Florida, being in the district confided to him by the said authority and instructions, to wit: One hundred and fifty (150) bales, then in possession of F. Cotton; fifty-six (56) bales in possession of Burton Bellomy; sixty (60) bales in possession of Smith Simpkins; fifteen (15) bales in possession of Kroannes; eight (8) bales in possession of McGinnes; and sixteen (16) bales in possession of Gamble.

That on or about the first (1st) day of September, 1865, he seized, as aforesaid, in the county of Lafayette and State of Florida, a lot of one hundred (100) beef cattle, which have been turned over to the commissary department of the United States Army; that about the same time, on the Suwanee River below Old Town, in the said county and State, he seized, as aforesaid, four hundred (400) sticks of square cedar timber, being about ten thousand (10,000) cubic feet.

And your petitioner further shows that, by the said seizure, the United States become entitled to hold and retain all of the said property, it having

been at the time of its seizure owned in part by the so-called Confederate Government, and part by the Exporting and Importing Company of Georgia (president G. B. Lamar), a company engaged in the sole business of blockade-running, and holding said property for the purpose of aiding and abetting the rebellion; and the remainder thereof the property of J. V. Vance and other parties who claimed to hold the same for the State of North Carolina; but said property was solely held by them for the purposes of blockade-running and aiding and abetting the rebellion.

Your petitioner shows that he proceeded with promptness and diligence, in pursuance of his duties, to acquire the information and to
193 [96] collect the evidence necessary to establish the right of the United States to the said property; and he believes that at the proper time, owing to his exertions in the matter, the requisite testimony can be adduced if the title of the Government should be contested.

Your petitioner shows that on the 22d of July, 1865, a circular of instructions was issued from the Treasury Department requiring all persons acting under such authority as your petitioner possessed to close up their operations, a copy of which circular is hereto annexed and marked "Exhibit E;" but your petitioner avers, that owing to the isolated position of the country in which he was operating, and the absence of all mail and telegraphic facilities, he continued in the performance of his said duties until the middle of September, 1865, without any knowledge or information of any kind of the existance or promulgation of said order; the first notice of its having been received by him on or about the 15th of September, 1865, when a copy of it was inclosed with a note from one Augustus W. Sexton, jr., a copy of which is hereto annexed and marked "Exhibit F;" and your petitioner shows that upon the receipt of said note he at once ceased making any further seizures on behalf of the United States, and in all respects conformed to the requirements of said circular.

And your petitioner further shows that, while acting under the authority and instructions before referred to, he became entitled by virtue of the terms thereof, as a compensation for his services, to one-third ($\frac{1}{3}$d) of the property so discovered and seized by him as aforesaid; that he expended large sums of money out of his own means in employing agents, detectives, and legal advisers, and in paying travelling expenses and for information which enabled him to make the said seizures and establish the title of the United States to said property, amounting in all to more than twelve thousand dollars ($12,000), for none of which has he received any compensation from any source whatever; that unless he is protected by the action of the Treasury Department he will entirely lose all the fruits of his labor, as well as the large sums which he has expended.

Your petitioner, therefore, prays that he may be authorized and empowered to resume possession of the property so seized by him as aforesaid and forward the same to the port of New York in the cheapest and most expeditious manner; and if the said property, or any part thereof, has been removed by any unauthorized parties, that he may follow it and enforce the claim of the Government, and that he may be allowed to retain from said property for his compensation on'-third ($\frac{1}{3}$d), the amount as agreed upon; and that, in the event of said property having been removed or forwarded to market by the agents of the Treasury Department, or appropriated to the use of the United States, he may be awarded one-third

(⅓) of the proceeds or value thereof, as the case may be, and that he may have such other and further relief as the nature of his case may require.

As evidence of the standing and character of your petitioner, he refers to the annexed letter of Maj. Gen'l J. G. Foster, marked "Exhibit G."

And your petitioner will ever pray, &c.

S. G. CABELL.

{ M. H. N. KENDIG, NOTARY PUBLIC, WASHINGTON, D.C. } Sworn & subscribed before me at Washington, D. C., this 14th day of Nov., 1865.

M. H. N. KENDIG.

[Internal-revenue stamp, 5 cents, Nov. 14, 1863.]

194[97] (Indorsed:) Petition of S. G. Cabell, aid to U. S. ag't. Wash., Nov. 14, '65. For compensation for service. Ans'd Nov. 17, '65. C. 587, Nov. 15, '65.

(Copy. A. B.)

EXHIBIT A.

OFFICE OF THE ASS'T SPECIAL AG'T TREA. DEP'T,
9TH SPECIAL AGENCY,
Appalachicola, Fla., July 22, '65.

SIR: By authority vested in me, under the regulations of the U. S. Treasury Department, I hereby appoint you, S. G. Cabell, acting aid to ass't special Treasury agent for the district of Florida, to collect and receive all the cotton, tobacco, and other property which heretofore belonged to the so-called Confederate Government.

In the performance of this duty you have power to call on the military authorities for assistance should you require it.

You will ship all public property received by you, without delay, to Col. W. H. Nobles, ass't special agent Treasury Department for Appalachicola, Fla., and report to him once a week, if practicable.

[SEAL.] (S'g'd) J. H. ALEXANDER,
Ass't Sup. Special Agent U. S. Treasury Dep't,
& Ass't Collector of Customs.

To S. G. CABELL,
Aid to Act'g Ass't Sp'l Trea. Ag't of Florida.

Recommended by Gov. James Johnson, of Georgia.

(Indorsed:) Appointment as acting aid to ass't special agent Treasury Department. July 22d, 1865. Copy.

EXHIBIT B.

OFFICE OF ASS'T SPECIAL AG'T,
Columbus, Ga., 22d July, 1865.

SIR: You will proceed at once to your district and collect all cotton, tobacco, & other property of the so-called confederate government which may be found within your district, and ship the same to Col. W. H. Nobles, ass't aid to special ag't Treasury Department for Appalachicola, Fla., he

paying the freight for the Government, but you have power to draw on him for expenses incurred in transporting said articles. Should you not be able to receive any funds from Col. Nobles to enable you to pay such expenses you are authorized to sell sufficient of the produce collected at market price in your district. You will be very careful not to interfere in any manner with property of loyal citizens. Your compensation will be one-third of all the public property collected by you, which third you can retain in your own hands.

[SEAL.] (S'g'd) J. H. ALEXANDER,
Ass't Sup. Special Ag't U. S. Treasury Department,
& Ass't Collector of Customs.

To S. G. CABELL,
Aid to Act'g Ass't Sp'l Trea. Ag't for Fla.

195 [98] You will sig. your official act. aid to assist. special ag't Trea. Dep't

J. H. ALEXANDER.

(Indorsed:) Instructions from J. H. Alexander to collect cotton and other produce belonging to the so-called confederate government. Copy.

EXHIBIT C.

OFFICE OF ASS'T SUPERVISING SP'L AG'T TREA. DEP'T,
9TH SPECIAL AGENCY,
Appalachicola, Fla., August 24th, '65.

S. G. CABELL, Esq.,
Tallahassee, Fla.:

SIR: You will at once report in person at this office, in order to receive your commission as agent of the Treasury Dep't in collecting cotton under the new regulations of the Dep't.

Very respectfully, your ob't serv't,

J. H. ALEXANDER,
Ass't Sup'g Sp'l Ag't Treas. Dep't.

(Indorsed:) Letter from J. H. Alexander requiring to report in person at Appalachicola, dated Aug. 24th, 1865. Copy.

Instructions to local agents.

OFFICE SUPERVISING SPECIAL AGENT TREA. DEP'T,
NINTH AGENCY,
Appalachicola, Fla., Aug. 25th, 1865.

SIR: You will proceed to Tallahassee, Florida, and resume the collection of cotton & other Government property in the district of the western coast of Florida as far as the Savannah River, which is the limits of the 9th agency, taking with you the list of Government cotton which you have receipted for, and proceed at once to call on all the planters named therein. Those who still have cotton will give you a memorandum of the same, and you will hold them responsible for its safety, and gather it as soon as possible. Your district will include, in addition, the southern tier of counties of Georgia lying between the Suwannee & Chattahoochee rivers.

Those who have not the Government cotton on their places must give you a satisfactory account of its disposition, in writing, as to how disposed of, date, to whom, and why allowed to be taken; if stolen or sold, giving all the particulars in writing. If any parties refuse to deliver you will call in military aid, unless interfering with an already established civil process of resistance, in which case notify me at once.

You will also notify me at once of the best and the most judicious points for concentrating the cotton for shipment, and where it will be most accessible for transportation, either by railroad or river. If the planter has the cotton have it weighed, and a jointly signed certificate of weights made, marks and numbers of the bales, and general condition and character as to quality, where situated, when hauled, how many miles, and to what landing, sending me this description. Give a receipt in duplicate for
196 [97] the same to the planter, sending me two copies of the same. Get an acknowledgement of the planter stating the above facts, and send the same to me, together with receipts, bills of expenses, number and bills of lading of each lot separately. Each lot to be numbered in succession, and all facts as above registered in a book kept by you, keeping an exact statement of every particular, and expense on each lot and number; when delivered to an agency aid and not immediately shipped, take full receip's in triplicate from him, retaining one and forwarding to me two.

Report to this office once a week the particulars of your transactions. If bagging and rope are used, state how much on each lot.

The cotton collected by you, you will have stored at St. Mark's, Fla., or sent to this place, consigned to me, with a statement of all dues thereon, so that the same may be paid.

By order of Col. J. H. Alexander, as't sup'g sp'l ag't Trea. Dep't.

[SEAL.] W. H. NOBLE,
Act'g Ass't Sp'l Ag't Treasury Department.

To S. G. CABELL, ESQ.,
Agency Aid, Treasury Department.

EXHIBIT E.

TREASURY DEPARTMENT, *July* 22, 1865.

SIR: It has come to the knowledge of this Department that large contracts have been made by some of its agents with various persons for the collection of abandoned or captured or surrendered cotton; authority being generally, or in many instances, given to the contractors to discover and collect all such cotton within a certain district.

While such contracts have been to some extent contemplated or authorized by previous regulations such action now is not in conformity with the spirit or intention of the Executive proclamation relating to the subject, and if any contracts of that character have been made by you, operations under them should be suspended and closed up at once.

Where agents have not adequate facilities for these purposes at their own command, and the public interest would be prejudiced by delay, no objection exists to the making by them of contracts with reputable or responsible persons, on reasonable and proper terms, for the collection, putting in order, and transportation to points accessible for shipment by rail or water of certain specific lots of cotton known to the agent, the locality,

quantity, and description of which should be fully and accurately stated in each case; but, in view of the manifest evils likely to result from such steps, no arrangement will be sanctioned which contemplates the scouring any given portion of the country for the property of the character herein referred to by persons who are not the bonded officers of this Department.

As stated before, any existing contract heretofore made by you not in conformity with the spirit of these instructions must be at once modified or closed up, and your future action shaped accordingly.

Respectfully,
(Signed) H. McCULLOCH,
Secretary of the Treasury.

To J. H. ALEXANDER,
Ass't Sp'l Ag't Treas. Dep't.

True copy:
(Signed) J. H. ALEXANDER,
Ass't Sp'l Ag't Treas. Dep't.

197 [100] TALLAHASSEE, FLORIDA, *Sep.* 9, 1865.

True copy for information and guidance of S. G. Cabell, esq'r., agency aid.

AUGUSTUS H. SEXTON, JR.,
Clerk in Office Ass't Sp'l Ag't.

EXHIBIT F.

TALLAHASSEE, FLA., *Sept.* 13, 1865.

S. G. CABELL, Esq.,
Agency Aid, &c.:

SIR: I am directed by J. H. Alexander, esqr., ass't sp'l ag't Treas. Dep't, through his deputy, W. H. Nobles, to inform you, that in accordance with letter of instructions received from the Hon. Secretary of the Treasury, dated Washington, D. C., July 22d, 1865, a copy of which has been furnished you, you will at once stop all proceedings and take no further action under the contract granted you by J. H. Alexander, ass't sp'l ag't for the collection of Government cotton and other property, and request that you will report in person at the office of the ass't sp'l ag't, at Apalachicola, Fla., as soon as possible.

Very respectfully, your ob't ser't,
AUGUSTUS W. SEXTON, JR.,
Clerk in Office of Ass't Sp'l Ag't at Apalachicola, Fla.

EXHIBIT G.

HEADQUARTERS DEPARTMENT OF FLORIDA,
ASSISTANT ADJUTANT-GENERAL'S OFFICE,
Tallahassee, October 29th, 1865.

Hon. HUGH McCULLOCH,
Secretary of the Treasury U. S., Washington, D. C.:

SIR: I have the honor to transmit herewith, for your investigation and

decision, the following documents in relation to a certain lot of cotton, &c.

* * * * * * *

While addressing you thus, I beg leave to add that the acting aid to the ass't sp'l ag't, as Mr. Cabell is called, is under the direction or orders of the special agent, stationed at Apalachicola; and as communications between that place and this are often entirely cut off, and in the best time very difficult, I respectfully recommend Mr. S. G. Cabell for the appointment of special agent for Middle Florida. This recommendation is based upon my conviction of the trustworthiness, energy, and faithfulness of Mr. Cabell as an U. S. officer, that the service will be benefitted by it.

I have the honor to be, very respectfully, your ob't servant,

(Signed) J. G. FOSTER, *M. G. Com'd'g.*

(Indorsed:) Exhibits A, B, C, D, E, F, & G, accompanying the petition of S. G. Cabell of Nov. 14, 1865.

198 [101] (Copy.)

II.

TREASURY DEPARTMENT, *November 17th*, 1865.

SIR: I have received your application for compensation for certain services performed by you under an appointment from J. H. Alexander, esq., ass't special agent, at Pensacola and Apalachicola, Fla., in collecting and securing for the Government of the United States certain captured property therein enumerated.

In fixing the amount of your compensation, Mr. Alexander transcended his authority and promised you an amount larger than has been approved by me in any case, and much larger, in my opinion, than the circumstances in these cases would justify. Nor does it appear that the property in question has been actually placed in possession of any agent of this Department, or in fact removed from the places where it was discovered. In view, however, of the stipulations made by Mr. Alexander and services you have performed and will still be able to perform for the Department in connection with the collection of this property, I desire that you return to your late field of operations and do all in your power to secure to the Government the cotton named by you, and to transport the same to a proper place of shipment at the earliest practicable day; and I will agree to make such an allowance as compensation for your services as will be liberal and just, in view of the character of your services and the risk and expenses incurred by you in performing them. To this end it will be necessary for you to keep accurate accounts and a full history of all the facts connected with all lots of cotton so secured and delivered by you.

Please acknowledge the receipt hereof, and advise me whether the proposition herein made will be accepted by you.

Very respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

S. G. CABELL,
Acting Aid to Ass't Sp'l Agent
Treas'y Dep't, Ninth Special Agency.

(Copy. A. B.)

III.

WASHINGTON, D. C., *Nov.* 18th, 1865.

Hon. HUGH MCCULLOCH,
Secretary of the Treas'ry:

SIR: I am in receipt of your communication of the 17th of Nov., authorizing me to return to my late field of operations in Florida and Southern Georgia, and to do all in my power to the Government the cotton named in my communication of the 16th of November, and I hereby signify my acceptance of your proposals.

Before leaving the city I would desire further instructions as to the mode of paying the necessary expenses to be incurred in bringing the
199[102] said cotton to a proper place of shipment, and to whom I am authorized to turn the cotton over *to.*

In your communication no mention is made of my claim for compensation for collecting or securing the ceder timber and the cattle named in my petition, and I understand that decisions upon these matters has been deferred.

I am, very respectfully, your ob'd't serv't,

S. G. CABELL.

(Indorsed:) S. G. Cabell, Wash., Nov. 18, '65. Accepts re-appointment—asks instructions rel. thereto—expenses, &c. Ans'd Dec. 29. C, 593. Nov. 20, '65.

(Copy. A. B.)

IV.

TALLAHASSEE, FLORIDA, *December* 11th, 1865.

Hon'l H. MCCULLOCH,
Secretary of the Treasury:

SIR: I have the honor to report that, agreeable to your orders contained in your letter of Nov'r 17th ult., I have already shipped to Jacksonville, for shipment to New York, one hundred & seventy bales of cotton, a part of the lot formerly owned by the Exporting and Importing Company, and am engaged preparing the balance for shipment.

I have the honor to report that I proceeded to Thomasville, Georgia, and to carry out your instructions relative to the cottons at that point & vicinity, estimated at over fifteen hundred bales, and specified in my petition, to which your letter of the 17th of November was an answer, and found that the cotton was being shipped by Mr. Brown, special agent of the 5th district, upon whom I made a demand for the cottons, who refused to allow me to touch a bale of the cotton, and I was refused assistance from the military commander at that post, on the ground that he had no authority in the premises. I have respectfully to state that I served, in writing, notices upon the holders of this cotton, and was the party by whose aid the Gover'ment did finally come into the possession of the same.

I have to respectfully ask that the said special agent, Brown, be ordered to allow me to carry out my orders contained in your letter of Nove. 17th, and that he be required to make a report as to what disposition he has made of any part of said cotton, and that the military be ordered to aid me in guarding the same, and such other assistance as they may be able to render.

I have the honor to be, very respectfully, your ob't serv't,

S. G. CABELL,
Acting Agent Treasury Dep't.

(Indorsed:) S. G. Cabell, Tallahassee, Dec. 11, 1865. Rel. to certain cotton at Thomasville, Ga., being shipped by Sup. Ag't Brown. Ans'd Dec. 29. C, 629. Dec. 28, 1865.

200 [103] (Copy.)

V.

TREASURY DEPARTMENT,
December 29th, 1865.

SIR: I have received your letter of the 11th instant, advising me that, in accordance with my instructions of Nov. 17th, you had shipped to Jacksonville, for shipment to New York, 170 bales of cotton, being part of a lot formerly owned by the Exporting and Importing Company, and that you are engaged in preparing the balance for shipment; also, that you visited Thomasville, Ga., in relation to the cotton at that point, and found that it was being shipped by Mr. Browne, supervising sp'l agent 5th agency, upon whom you made a demand for the cotton, and that he refused to allow you to touch a bale of it; stating, also, that you were the party by whose aid the Government finally came into possession of it, and asking that Mr. Browne be ordered to allow you to carry out the instructions referred to, &c., &c.

My letter of Nov. 17th to which you refer, was not intended to authorize you to take possession of any cotton which might be found in the hands of a duly authorized agent of the Department, but was intended rather that you should co-operate with such agents, and to empower you to take into your possession any cotton belonging to Government not in the custody of any other officer of the Department, and which might not otherwise be secured by them.

Inasmuch as it appears, by the records in this Department, that the cotton at Thomasville was turned over to Mr. Browne by the military authorities in August last, and regularly receipted for by him, I must decline to comply with your request to direct him to turn it over to you.

Mr. Browne has made a representation of the matter to the Department, from which it appears that you have assumed to authorize other persons "to seize all the cotton, tobacco, and other property which heretofore belonged to the so-called confederate government." A perusal of my letter to you of Nov. 17th will show that no authority to appoint subordinates was delegated to you; nor was it intended to do more than secure your services in connection with the lots of property specified by you. No indiscriminate seizures or collections were contemplated by it; you will, therefore, withdraw any such appointments you may have given, and conform your general action accordingly.

Relative to the instructions asked for in your communication of the 18th ult., I have to say, as to the mode of paying the necessary expenses incurred in bringing cotton to a proper place of shipment, that such expenses should be paid by the vessel transporting it to New York, and the same should follow the cotton as charges, to be paid by the United States cotton agent in New York. It is thought that any vessel desiring to secure the freight will make this arrangement.

It is proper to add here that it is not necessary that the shipments of cotton to New York should be made by you. The spirit of my instructions will be carried out as well by your delivering it to any authorized agent near where the same may be found, or at the place of shipment, and your compensation will be allowed accordingly.

Your letter of the 11th instant conveys no specific information in regard to where the cotton referred to was found, nor to whom or by what vessel or conveyance the same was shipped. In this connection, I desire to call your attention to that paragraph of my letter of Nov. 17th requiring you to keep accurate accounts and a full list of all the facts connected with
201 [104] any lots of cotton secured and delivered by you. A copy of this record and history should be forwarded to the Department immediately on the shipment of any lot, and a copy should also be furnished to the agent to whom it is turned over or consigned.

Very respectfully,
(Signed) H. McCULLOCH,
Secretary of the Treasury.

S. G. CABELL, Esq.,
Acting Aid Treasury Department, Tallahassee, Fla.

(Copy.)

VI.

TREASURY DEPARTMENT, *January 16th*, 1866.

GENTLEMEN: I have received your memorial on behalf of Samuel G. Cabell, praying for the allotment to him of one-third of certain cotton shipped to New York, per schooners E. J. Palmer and Potomac, and seized and held as Government property by the agent there, at the request of Mr. Cabell, in accordance with the stipulations of his appointment as "acting aid" by Assistant Special Agent Alexander.

In agreeing to give so large a portion of the cotton collected, Mr. Alexander transcended his authority and violated his plain instructions, and the ratification of his action in the matter by the Department must depend very largely on the circumstances connected with the collection, care, and delivery of the property.

Inasmuch as Mr. Cabell fails to present to the Department any information in regard to any services performed or expenses incurred by him in connection with the lots in question, and furnishes no grounds for seizing the same, or why it can be held as Government property, I must for the present decline to make him any allowance whatever.

Respectfully,
(Signed) H. McCULLOCH,
Secretary of the Treasury.

HUGHES, DENVER & PECK,
Attorneys, Washington, D. C.

(Copy. A. B.)

VII.

WASHINGTON, D. C., *February 17th*, 1866.

Hon. HUGH MCCULLOCH,
Sec'y of Treasury:

SIR: In accordance with your letter of the 17th Nov'r last, requesting me to return to my late field of operations in Florida and Southern Georgia, and to do all in my power to secure to the Government the cotton mentioned in my communication to you of Nov'r 16th last, I have now the honor to make the following report:

As will be seen by an official transcript of the books of the "custom-house," Jacksonville, Fla., collector's office, Jan'y 25th, 1866, and herewith submitted, marked "Exhibit A," I shipped on board the brig Lewis Clark one hundred and seventy-seven (177) bales of 202 [105] cotton, weighing ninety-two thousand one hundred and one (92,101) pounds; also shipped on board the schooner Queen of the West, ninety-five (95) bales of cotton, weighing forty-eight thousand three hundred and twenty-one (48,321) pounds, all of which cotton was marked "U. S." and consigned by me to Simeon Draper, esq., cotton agent, New York City.

The above-mentioned cotton which was seized by me, &c., was owned by the Exporting and Importing Company of Georgia (president, G. B Lamar), a company engaged in the sole business of blockade running and holding said property for the purpose of aiding and abetting the rebellion, as stated in my communication to you of the 16th Nov. last.

Most of the cotton purchased for the above company in Florida and Southern Georgia was made by one who signs himself as "W. W. Cheever, agent for G. B. Lamar," as will more fully hereafter appear when reference is made to certain lots of cotton by me seized and shipped. It also appears that the said cotton was purchased by the agents of Mr. Lamar and left on the plantations subject to their order.

Part of the cotton seized and shipped by me to New York, as herein before stated, was taken from Mr. Burton Bellamy, residing in Jefferson Co., Florida, about fourteen miles from Station No. 4, on the Pensacola and Georgia R. R. On or about the 20th of Sept., 1865, I visited Mr. Bellamy's plantation, and personally stated to him that I should hold him personally responsible for the safety and keeping of fifty-six (56) bales of cotton purchased from him by "W. W. Cheever, ag't for G. B. Lamar." At the time of the seizure of this cotton Mr. Bellamy informed me that the Importing and Exporting Co. or Mr. G. B. Lamar owed him $1,874.00 for storage, repairing, and putting in proper order, and also for transporting or hauling to the railroad two hundred and forty-seven (247) bales out of a lot of three hundred and four (304) bales purchased by the agent of the said co. As Mr. Bellamy stated that he held the fifty-six (56) bales as security for the payment of his charges, and being convinced of the correctness of the same, I paid the charges, as will be seen by receipt marked "Exhibit B." For information in regard to this matter I respectfully call your attention to my letter of the 10th and 13th Oct., 1865, marked exhibits "C," "D," and also the reply of Mr. Bellamy of Oct.

12th, 1865, marked "Exhibit E." I also enclose a copy of letter marked "Exhibit F," from Dunham and Palmer to G. B. Lamar, Savannah, and dated Dec. 5th, 1863, relative to the tax paid by them on the cotton purchased from B. W. Bellamy and Smith Simpkins.

After Mr. Bellamy had placed the fifty-six (56) bales of cotton in the possession of the P. and G. R. R. Co., at Station No. 4, it appears that he had retaken possession of twelve (12) bales, as the Imp't and Exp't'g Co. or G. B. Lamar owed him $1,874.00 (see my letter to Mr. Bellamy, Exhibit G), but subsequently the twelve (12) bales were again placed in the possession of the said railroad co., as I paid Mr. Bellamy his charges, as heretofore stated, and again gave him a receipt for the whole of the fifty-six (56) bales as per Exhibit H, but by the carelessness and negligence of the railroad co. all the said cotton was stolen while the same was in its possession. However, through the exertions of myself and assistants, I eventually recovered forty-two (42) bales. It is proper to state that Maj. Gen. Foster, com'd'g the Dep't of Florida, and also his ass't adj't gen., Mundee, rendered me essential and valuable assistance in the recovery of this amount. Twenty-seven (27) bales were taken from P. Moody, collector of customs, Jacksonville, Florida (see my statement as to this transaction); also that of Brevet Brig. Gen'l Mundee, marked "Exhibit I;" twelve (12) bales from Burton Bellamy, see Exhibit J; one
203 [106] (1) bale from W. O. Hampton, see Exhibit K; also see Exhibit L, being the bond of W. O. Hampton for two (2) more bales of cotton, making in all forty-two (42) bales recovered. I also enclose a copy of my letter to Hampton, marked Exhibit "M."

In connection with the recovery of this cotton I paid out certain sums of money, as follows: A. J. Becket, $216.45; P. B. Brokan, $201.50; and to E. Cruell, $60.00, as per receipts marked exhibits "N," "O," and "P;" also see two (2) letters of E. Cruell, marked "Exhibits Q."

In relation to my action with the railroad co. about the transportation, &c., of the above lot of fifty-six (56) bales of cotton, I herewith enclose a copy of my notice to the sup't, C. T. W. Syfan, esq., dated Oct. 10th, 1865, and marked "Exhibit R;" also *is* a copy of my letter to Maj. Gen. Foster, marked "Exhibit T;" also a copy of my letter to the pres't or sup't of the P. and G. R. R. Co., marked "Exhibit W," in which I stated that I should hold the company responsible for the missing fourteen (14) bales out of the lot of fifty-six (56) bales; also enclosed is the reply to my letter by Mr. C. T. W. Syfan, sup't P. and G. R. R. Co. (marked "Exhibit V") to Major-General Foster, to which letter of Mr. Syfan is attached an affidavit of one Willie Thomas.

When all the cotton which I seized was ready for shipment to New York on board the schooner Queen of the West, ninety-five (95) bales, and the brig Lewis Clark one hundred and seventy-seven (177) bales, the Pensacola and Georgia Railroad Company had charges against the said cotton for transportation amounting in the aggregate to the sum of fourteen hundred and eighty-three dollars ($1,483.00), which amount I thought to be correct, but inasmuch as the railroad co. had failed to deliver the fifty-six (56) bales of cotton as before stated, &c., &c., &c., I refused to pay the same. However, by some arrangement between the railroad co. and the master or charter party of the schooner Queen of the West, the sum of three hundred and seventy-three dollars and fifty cents ($373.50) was

charged up against the said cotton for r. r. transportation and written on the margin of the bill of lading. Against the cotton shipped on the Lewis Clark, the sum of eleven hundred and nine dollars and fifty cents ($1,109.50) was charged for railroad transportation, and likewise written on the margin of the bill of lading.

The above item of charges was written on the margin of the bills of lading after the cotton was on board the vessels, and hence it was unnecessary for the master of the vessels or the charter party to allow such charges to be engrafted on said bills of lading.

I earnestly protested against it for the reason that I thought the railroad co. (Pensacola and Georgia R. R.) owed the Government not only for the loss of fourteen (14) bales (out of the lot of fifty-six (56) as before stated), but also for the expenses incurred by the Government (through me) in recovering the forty-two (42) bales. I beg leave to state that on the 25th day of Jan'y, 1866, I advised Mr. Simeon Draper, New York, of this transaction, and herewith enclose a copy of my letter, marked "Exhibit W."

In connection with the stealing of the fifty-six (56) bales of cotton from the railroad co., I beg leave to state that by my efforts and also by the efficient and timely aid of Maj. Gen. Foster, I had eight (8) men placed in prison who were implicated in committing the theft, three of whom turned State's evidence, and were released under bonds to appear at the trial by the civil authorities. It is to be hoped that the parties implicated will be convicted.

I also beg leave to report that part of the cotton seized and shipped by me to New York, as hereinafter set forth, was taken from the plantation of Mr. Fred. B. Cotten, who resides in the city of Tallahassee,
204 [107] Florida. From Mr. Cotten I took one hundred and seventy-eight (178) bales of cotton, as per copy of receipt marked "Exhibit X," being twenty-eight (28) bales in excess of my report to you of Nov'r 16, 1865. This lot of cotton was seized by me in the month of September, 1865. It was purchased for the Importing and Exporting Co. by one P. S. Perkins, as subagent of G. B. Lamar, the president of the "Importing and Exporting Co." I herewith enclose a copy of letter from W. W. Cheever, agent for "G. B. Lamar," dated Jan'y 11, 1863, and marked "Exhibit Y." I also herewith enclose a copy of my notice to Mr. Cotten, dated Oct. 12th, 1865, marked "Exhibit Z," to deliver said cotton to the Pensacola and Georgia R. R. Co.; also letter from Mr. Cotten to me dated Oct. 16th, 1865, marked "Exhibit A A;" also one of no date, marked "Exhibit B B," in which letters he says that wants an imperitive military order before the surrender is made of the so-called "Lamar cotton." Upon informing Maj. Gen'l Foster of the contents of these letters, I was promptly furnished with a guard of U. S. soldiers to assist me. The cotton was stored on plantations of Mr. Cotten, situated about twelve (12) miles from Tallahassee, Fla. Upon examination I found that the cotton was not in condition for shipment. After rebaling the cotton and otherwise putting it in order, I had it hauled by wagons to Tallahassee, and from thence taken by railroad to Jacksonville, Fla. For expenses incurred by me in rebaling and hauling the above cotton (178 bales), I herewith submit receipt showing that I expended the sum of ten hundred and forty-three dollars and thirty-five cents ($1,043.35), as will be seen by the receipts marked "Exhibit C C," $144.00; "Exhibit D D," $180.55; "Exhibit E E," $124.80; "Exhibit F F," $60.00, and also a certified account marked "Exhibit G G" for $534.00.

I also beg leave to report that part and parcel of the cotton by me seized and shipped to New York, per vessels heretofore stated, was taken from the plantations of Mr. George A. Croom, situated about three (3) miles from Tallahassee, Fla., county of Leon. From Mr. Croom I took sixty-two hundred and sixty-two (6,262) pounds of cotton, and which was made into twelve (12) bales. A copy of my receipt to Mr. Croom, dated Dec. 19th, 1865, is submitted and marked "Exhibit H H." When I made my report to you in Nov'r last, I stated that Mr. Croom had fifteen (15) bales, but this was only estimated, as at that period the cotton was not baled nor was it ginned. Hence the discrepancy. This lot of cotton was also purchased for the Importing and Exporting Co., of which G. B. Lamar was president, and W. W. Cheever, ag't for G. B. Lamar. See copy of letter (or quasi-contract) of Cheever to Croom, dated March 17th, 1863, marked "Exhibit I I;" also see copy of notice served on Mr. Croom by me, dated Oct. 12th, 1865, and marked "Exhibit J J."

I also beg to report that part and parcel of the cotton by me seized and shipped to New York, per vessels heretofore stated, was taken from the "Parkhill Plantation," Leon Co., Fla., about ten (10) miles from Tallahassee, Fla., six (6) bales of cotton; from the "Baily Plantation," about forty-two (42) miles from Tallahassee, Florida, in Jefferson County, Fla., twenty-five (25) bales of cotton. Mr. Smith Simpkins was manager of both plantations. Mr. Simpkins informed me that, in 1863, he sold to "W. W. Cheever, ag't for G. B. Lamar," the pres't of the Importing and Exporting Co., the following lots of cotton, viz:

From the Baily plantation, 25 bales.
" " Parkhill " 22 "

From the Baily plantation I recovered the whole twenty-
205 [108] five (25) bales; but from the Parkhill plantation I recovered
but six (6) bales, as the remainder had rotted, &c., as will be seen by the affidavit of Andrew J. Becket, marked "Exhibit K K;" also see copy of notice to S. Simkins, marked "Exhibit L L;" also letter of S. Simpkins, marked "Exhibit M M;" also letter from me to S. Simpkins, marked "Exhibit N N;" also, receipt to Simpkins, marked Exhibit "O O" and "P P," for thirty-one (31) bales of cotton. The expenses incurred by me in obtaining this cotton amounted to the sum of two hundred and forty-four dollars ($244.00), as will be seen by receipt of John H. Loper for $30.00, marked "Exhibit Q Q," and my certified account of $214.00, marked "Exhibit R R." In my report to you of November last, I stated that I had seized sixty (60) bales of cotton then in possession of Smith Simpkins. Upon investigation, however, I became satisfied that twenty-seven (27) bales of the said cotton was the property of C. H. Smith (see Smith's affidavit, marked "Exhibit S S"). Maj. Gen. Foster fully approved of my action in this matter. It will, then, be seen that I had overestimated the quantity of cotton in possession of Smith Simpkins (manager of the Baily and Parkhill plantations) by only two (2) bales.

In my report of November last, I stated that I had seized eight (8) bales of cotton in possession of Dan. B. Magginnis, also sixteen (16) bales in possession of Rob't H. Gamble. These seizures were made upon the certificate of J. B. Oliver, "agent Produce Loan Office" of the late C. S. A. The said certificate is herewith submitted, marked "Exhibit T T." Gen. Newton released this cotton, upon information from the Sec'y of the Treasury not to seize "tax-in-kind cotton." In connection with this mat-

ter, I submit copies of Gen. Newton's orders, marked Exhibit "W W" and "V V;" also copies of affidavits of D. B. Magginnis and R. H. Gamble, marked Exhibits "W W" and "X X" respectively; also enclosed is a copy of my letter to Messrs. Gamble and Magginnis, dated Dec. 19th, 1865, and marked "Exhibit Y Y."

Earley in September last I traced into Jacksonville, Fla., eleven (11) bales of cotton belonging to the Importing and Exporting Company. This cotton was placed in the warehouse of Jeffreys & Brothers, but fearing that I might have some trouble about obtaining it, Maj. Gen. Foster issued the enclosed order, marked "Exhibit Z Z;" also, is a copy of my order to Joseph Remington, to ship said cotton to New York, marked "Exhibit A A A;" also copy of receipt for $58.75, paid Jeffreys & Brothers for their charges on said cotton, marked "Exhibit B B B."

Referring back to the period in October last, when, through the influence of Governor Marion, Brig. Gen. Mundee sent me the letter or order (copy herewith submitted, marked "Exhibit C C C") "to stop all proceedings as to seizure or shipment of certain lots of cotton," and which letter or order referred to all the cotton by me seized and shipped to New York, viz, 272 bales, I deemed it proper, in order to protect the interests of the Government, to employ counsel learned and skilled in the law to procure evidence to be submitted to you that this cotton was the property of the Importing and Exporting Company. To the counsel so employed I paid D. P. Holland, esq., the sum of one hundred and fifty dollars in gold ($150.00), as per copy of his receipt, marked "Exhibit D D D;" also a copy of my certified account of the amount, viz, five hundred dollars ($500.00) in currency, paid to Judge O'Neil, herewith submitted, marked "Exhibit E E E." The evidence obtained by me through the services of these gentlemen was submitted to you by Maj. Gen. Foster in his letter to you of October 29th, 1865, a copy of which is herewith submitted, marked "Exhibit F F F."

206 [109] I also herewith submit a copy of my receipt, marked "Exhibit G G G," to Joseph Remington, for the loss of two (2) bales of Government cotton which I had seized and had stored with him. The receipt is for four hundred and twelve dollars and eighty cents ($412.80). In taking this amount of money from Remington for the loss of the said cotton, I think the Government received its full value.

It will thus be seen from the papers submitted, that I have been engaged since July last in seizing and otherwise obtaining this two hundred and seventy-two (272) bales of cotton for the Government. It will also be observed that I have incurred an expense of $7,066.80 (see Exhibit H H H) before the cotton was shipped to New York, but subtracting the amount in cash received from Remington reduces the actual cash expended to $6,654.00.

As compensation for my services, relative to this lot of two hundred and seventy-two bales of cotton, I now respectfully request that I be furnished by you with an order on Mr. Simeon Draper, New York, for one-third or ninety and two-thirds ($90\frac{2}{3}$) bales of said cotton.

I have the honor to be, very respectfully, your obedient servant,

S. G. CABELL,
Act. Ag't Tre's' Dep't.

(Indorsed:) Report of S. G. Cabell, February 17th. 1866, rel. to his operations in Florida and Georgia.

(Copy. A. B.)

VIII.

Abstract of expenditures and receipts, accompanied with copies of vouchers or "exhibits" of S. G. Cabell, acting agent Treasury Department, incurred relative to two hundred and seventy-two (272) bales of cotton shipped to S. Draper, New York.

To whom.	Exhibits.	Amount.
Cash paid Burton Bellamy	B	1,874 00
" " A. J. Becket	N	216 45
" " P. B. Brokau	O	201 50
" " E. Cruell	P	60 00
" " W. D. Bloxham	C C	144 00
" " G. H. Maginnis	D D	180 55
" " A. Hopkins	E E	124 80
" " G. C. Townsend	F F	60 00
" " S. G. Cabell (certified acc't)	G G	534 00
" " John H. Loper	Q Q	30 00
" " S. G. Cabell (certified acc't)	R R	214 00
" " Jeffreys & Brother	B B B	58 75
" " D. P. Holland (in gold)	D D D	150 00
" " Judge O'Neil	E E E	500 00
" " E. J. Young	G A B	107 75
" " Seward & Wright	G A C	25 00
" " J. L. McGoffin	G A D	500 00
" " S. G. Cabell (certified acc't)	G A E	2,086 00
		7,066 80
Cash rec'd from J. Remmington	G G G	412 80
Am't cash paid out		$6,654 00

(Indorsed:) Exhibits H H H. Abstract of expenditures and receipts of S. G. Cabell, act. agent Treasury Dep't, relative to two hundred and seventy-two (272) bales cotton shipped to S. Draper, New York.

207 [110] (Copy. A. B.)

IX.

IN THE MATTER OF COMPENSATION CLAIMED BY S. G. Cabell, acting aid to assistant special Treasury agent, 9th special acency. — February 27th, 1866.

The petition of S. G. Cabell, a loyal citizen of the United States and a resident of Quincy, Adams County, Illinois, represents that J. H. Alexander, then acting assistant supervising special agent of the United States Treasury Dep't for the ninth (9) special agency, under the regulations of said department, for the collection of captured and abandoned property in the disloyal States, on the twenty-second (22d) day of July, 1865, appointed your petitioner acting aid to ass't special Treasury agent for the district of Florida, to collect and receive all the cotton, tobacco, and other property belonging to the United States; a copy of which appointment is hereto submitted, marked "Exhibit A." And on the same day the said Alexander gave your petitioner instructions in writing, a copy of which are herewith submitted, marked "Exhibit B."

Your petitioner further represents that, on the 29th day of July, 1865, he presented to the A. A. A. gen'l, "H'dq'rs milit'y forces at Tallahassee," his commission, &c., and asked for recognition and military assist-

ance to enable him to stop the shipment of a large quantity of Gov't cotton which was being shipped from Tallahassee by one Thomas Douglas, who represented himself as agent for shipping Gov't cotton to R. Ottman, who was reputed a Treasury agent, at Jacksonville, Fla.; that your petitioner urged upon the A. A. A. gen'l that the cotton being removed by the said Douglass was improper and unauthorized; that it was being taken from your petitioner's dist. and should, of right, be under his sole control, but that the said A. A. A. gen'l informed your petitioner that the general com'd'g was then absent and would not return for some ten (10) days; that the business was not in his regular routine of duty, and that, under the circumstances, he preferred not to act until the gen'l com'd'g should return.

Your petitioner further states that he then called upon L't Col. John Wilder, com'd'g, &c., and to him exhibited his commission, and of and from him asked permission and assistance to restrain the said Douglas from shipping cotton, &c., &c., from your petitioner's dist.; that the said l't col. declined to act in the premises, preferring to await the return of the gen'l com'd'g. Your petitioner also called upon the commandant of the post, but he declined to act in the absence of the gen'l com'd'g, whereupon your petitioner again protested to the said Douglas against removing any cotton from the said dist., but the said Douglas disregarded said protest. Your petitioner also telegraphed to Mr. Ottman. (See copy herewith submitted marked "Exhibit C," and also his reply, marked "Exhibit D.")

Upon the return of the gen'l com'd'g (August 11th, 1865), he issued an order (copy herewith, marked "Exhibit E") giving to your petitioner the exclusive privilege of shipping cotton as per his commission and instructions, and immediately thereafter the said Douglas came to your petitioner and voluntarily admitted that the said Ottman (in his opinion) had no right or authority to remove cotton, &c., from the said dist.; and thereupon the said Douglas informed your petitioner that two hundred and sixty-eight (268) bales of cotton had been shipped by him to the said Ottman, and that the said Ottman had not paid the expenses incurred
208 [111] in preparing the said cotton for shipment; whereupon your petitioner paid all of said expenses, amounting to the sum of $6,883.89, as will be seen by copies of receipts submitted and marked exhibits from F to N, and at the same time wrote to Simeon Draper, N. Y. City (see copy of letter marked "Exhibit O"), to "suspend any accounts with him (Ottman) until both parties can be represented," &c. Also, see copy of Thomas Douglas's affidavit in regard to the whole transaction, herewith submitted, marked "Exhibit P;" also enclosed are copies of my letters to Mr. Ottman, dated Aug. 16th and 17th, 1865, and marked exhibits "Q" and "R," respectively.

Your petitioner therefore prays that he be paid the amount expended by *by* him relative to this cotton, viz, $6,883.89, and that he be allowed "a liberal and just compensation for his services in the matter.

Respectfully submitted.

S. G. CABELL.

(Indorsed:) Petition of S. G. Cabell. February 27th, 1866. Rel. to 268 B. C. shipped from Jacksonville, Fla. For compensation for services. M'rk f'ms. C, 723, Feb'y 28, 1866.

(Copy. A. B.)

X.

Abstract of expenditures, accompanied with vouchers or receipt of S. G. Cabell, acting agent Treasury Department, incurred relative to two hundred and sixty-eight (268) bales of cotton shipped to S. Draper, New York.

Paid to.	Exhibits.	Amount.
Cash paid Thomas Douglas	F	107 50
" " W. M. Ledwith	F F	1,729 56
" " Thomas Douglas	G	19 13
" " W. D. Bloxham	G G	261 00
" " William Munroe	H	425 15
" " Thomas Douglas	H H	702 75
" " Thomas Douglas	I	144 75
" " R. C. Shorter	I I	3,164 30
" " Heir & Coles	J	32 30
" " Thomas Douglas	K	161 50
" " A. Hopkins	L	87 20
" " A. Gallee	M	52 50
" " Thomas Douglas	N	56 25
		$6,883 89

Shipped by Reuben Ottman in August, 1865.

(Indorsed:) Abstract of expenditures of S. G. Cabell, relative to two hundred and sixty-eight (268) bales of cotton shipped to New York, to S. Draper. $6,883.89.

(Copy. A. B.)

XI.

United States cotton sale at No. 112 *Pearl street, New York, September* 12*th,* 1866.

209 [112] Sold at auction, per order of Simeon Draper, U. S. cotton agent, from Jacksonville (by S. J. Cabell), by John H. Draper & Co., auctioneers, No. 112 Pearl st. (Hanover square), 177 bales cotton:

4 bales	strictly middling,	1,247 lbs.,	*a* 35¼		792 07
12 "	low middling,	6,591 "	31½		2,076 17
25 "	good ordinary,	12,545 "	29¼		3,669 41
36 "	ordinary,	17,877 "	27½		4,916 18
8 "	pickings,	3,667 "	19¾		724 23
92 "	rebaled,	45,026 "	27	12,157 02	
				24,335 08	

CHARGES.

Freight	3,288	24
Lighterage	72	"
Storage & labor	398	25
Classing & sampling	44	25

Weighing	26 55	
Insurance	1,001 89	
Advertising & catalogues	35 65	
Commission	121 67	
		4,988 50
		$19,346 58

E. & O. E. JNO. H. DRAPER & CO.
TOOHEY.

(Indorsed:) John H. Draper & Co. Sale of 177 bales cotton from S. J. Cabell, Jacksonville. Sept. 12, 1866. $19,346.58.

(Copy. A. B.)

XII.

United States cotton sale at No. 112 *Pearl street, New York, September* 12*th*, 1866.

Sold at auction, per order of Simeon Draper, U. S. cotton agent, from Jacksonville (by S. J. Cabell), by John H. Draper & Co., auctioneers, No. 112 Pearl st. (Hanover square), 95 bales cotton:

4 bales	low middling,	1,875 lbs.,	*a*	31½ c		590 62
17 "	good ordinary,	7,779 "		29¼		2,275 36
11 "	ordinary,	5,251 "		27½		1,444 02
4 "	pickings,	1,902 "		19¾		375 65
59 "	rebaled,	27,899 "		27		7,537 73
						12,218 38

CHARGES.

Freight	1,749 61	
Lighterage	38 "	
Storage & labor	213 75	
Classing & sampling	23 75	
Weighing	14 25	
Insurance	531 01	
Advertising & catalogues	19 13	
Commission	183 27	
		2,772 77
		$9,445 61

E. & O. E. JNO. H. DRAPER & CO.
TOOHEY.

210 [113] (Indorsed:) John H. Draper & Co. Sale of 95 bales of cotton, from S. J. Cabell, Jacksonville. Sept. 12th, 1866. $9,445.61.

(Copy. A. B.)

XIII.

MAY 4, 1866.

SIR: Application is made to me by S. J. Cabell, esq., for the allowance to him of a portion of certain two hundred and seventy-two (272) bales of cotton collected by him, and shipped to you from Jacksonville, Fla., on the 25th of January last, and for a portion, also of certain two hundred and sixty-eight (268) bales alleged to have been collected by him and turned over or shipped to Reuben Ottman, esq., assistant special agent at Jacksonville, Fla.

I am not at present prepared to make a division of either lot; but it appearing to my satisfaction that Mr. Cabell has paid as expenses incidental to securing the first lot the sum of six thousand six hundred and fifty-four dollars ($6,654), and on the second the sum of six thousand eight hundred and eighty-three dollars and eighty-nine cents ($6,883.89), which amounts should probably be reimbursed; you are hereby authorized and directed to pay to his attorneys, Mess. Hughes, Denver & Peck, the two amounts named, charging the first as an item of expense against the two hundred and seventy-two bales above referred to, and the second as a similar item against the shipment of cotton received by you from Mr Ottman, at Jacksonville.

Mr. Cabell also asks a per diem allowance as a compensation for his time, personal services, and expenses in connection with the cotton named; for this purpose you are also authorized and instructed to pay his attorneys, Mess. Hughes, Denver & Peck, the sum of three hundred and fifty dollars ($350,) being at the rate of five dollars ($5) per day from the 17th of Nov. last, the date of my letter authorizing him to take action in the premises, to the 25th of January, the date of the shipment by him of the two hundred and seventy-two (272) bales mentioned, from Jacksonville, making a charge of this amount, also, as an item of expense against the two hundred and seventy-two (272) bales.

These several sums should be charged against Mr. Cabell, on your books, and will be deducted from any portion of cotton hereafter allotted, or any allowance made to him on a final settlement of his claims.

You will, of course, require proper receipts for the money thus paid, and promptly report your action hereunder to the Department.

Very respectfully,

H. M'CULLOCH,
Secretary of the Treasury.

SIMEON DRAPER, Esq.,
U. S. Cotton Agent, New York.

XIV.

$13,887.89.] WASHINGTON, D. C., *May 5th*, 1866.

At sight pay to the order of S. G. Cabell thirteen thou-

211[114] sand eight hundred & eighty-seven $\frac{89}{100}$ dollars, value received, and charge the same to account of—

HUGHES, DENVER & PECK.

To SIMEON DRAPER,
U. S. Cotton Agent, No. *New York.*

Correct. See Secretary's letter dated May 4, '66.

F. R.

(Written across the face:) Paid.

[5-ct. int. rev. stamp. C. N. B. 2, 7, '66.]

(Endorsement:)

S. CABELL.

Pay Croton Nat'l B'k or order for collection, acc't of National Bank of the Metropolis.

A. S. PRESSELL, *A. C.*

Paid at the Croton Nat'l Bank.

(Copy. A. B.)

XV.

UNITED STATES COTTON AGENCY,
CUSTOM-HOUSE, NEW YORK.
New York, May 7th, 1866.

SIR: I have received your letter of the 4th instant, with instructions to pay to Messrs. Hughes, Denon & Peck the following sums on account of expenses on certain cottons shipped from Jacksonville, viz 6,654 00

6,883 89

Compensation to S. G. Cabell..... 350 00

$13,887 89

I have this day paid a draft made by the above parties in favor of Mr. Cabell for thirteen thousand and eight hundred eighty-seven $\frac{89}{100}$ dollars, and have made the charges as directed, referring to your letter by date as my voucher for such payment in the final settlement of my account.

I notice a discrepancy in the quantity of cotton referred to in your letter as having been shipped by Cabell, the number of bales actually received being two hundred and seventy-four (274), instead of two hundred & seventy-two (272).

Very respectfully, your ob't se't,

S. DRAPER, *U. S. Cotton Agent.*

Hon. H. MCCULLOCH,
Secretary of the Treasury, Washington, D. C.

(Indorsed:) S. Draper, U. S. cotton ag't. May 7, '66. In relation to payment of $13,887.89 to Hughes, Denon & Peck, for account of S. G. Cabell. Mr. Kfay. D. 808. May 8, '66.

212 [115] (Copy. A. B.)

XVI.

MAY 25, '7.

SIR: In compliance with the promise made to him in my letter of November 17th, 1865, I have decided to pay to Mr. Samuel G. Cabell, as full compensation for information furnished, services performed, and expenses incurred by him in the collection, putting in order, and shipment to New York of certain 272 and 268 bales of cotton, ea., brig Lewis Clark, and schooners Queen of the West, Julia Crawford, and R. E. Pecker, etc., and for information furnished and expenses incurred by him touching the cottons captured at Thomasville, Ga., and other cottons claimed by the Georgia Exporting and Importing Company, or by G. B. Lamar, and held by Government as captured or abandoned property, the sum of four thousand eight hundred and eighty-one dollars and ten cents ($4,881.10).

You will, therefore, please issue your requisition upon F. E. Spinner, esq., Treasurer, U. S. special agent; the same to be satisfied out of any funds in his hands as proceeds of captured and abandoned property, for the amount named, viz: $4,881.10, in favor of George Peabody Este, whose full power of attorney to act in the premises is on file in this office.

The draft, therefore, when issued, should be handed to Mr. S. H. Kauffmann, a clerk in this office, for delivery to the payee, under such instructions relative thereto as he may have or receive.

Very respectfully,

H. M'CULLOCH,
Secretary of the Treasury.

NATHAN SARGENT, Esq're,
Commissioner of Customs.

(Copy. A. B.)

XVII.

S. G. Cabell's claim.—Basis of settlement.

272 bales, gross value (at N. Y. or J.)		$36,553 46
¼ of which, to Cabell, is		9,138 36
Deduct expenses refunded him	$6,654 00	
" ¼ " to and at N. Y	1,940 31	
		8,594 31
Balance due Cabell		$544 05
268 bales, gross value (at N. Y. or J.)		44,910 56
¼ of which, to Cabell, is		11,227 64
Deduct expenses refunded him	$6,883 89	
" ¼ of " to and at N. Y	506 70	
		7,390 59
Balance due Cabell		$3,837 05

For services, information, expenses, etc., in relation to the Thomasville and other cottons claimed by Lamar..... $500 00

213 [116] RECAPITULATION.

On the 272-bale	lot	$544 05
" " 268 "	"	3,837 05
" " Thomasville	"	500 00
Whole am't paid		$4,881 10

See letter to Commissioner of Customs, May 25, 1867.

(Indorsed:) Cabell claim. Basis of settlement.

(Copy. A. B.)

XVIII.

Know all men by these presents that I, Samuel G. Cabel, of the State of Illinois, have this day made, constituted, and appointed, and, by these presents, do hereby make, constitute, and appoint, George Peabody Este, of the city of Washington, District of Columbia, my true and lawful attorney, for me and in my name to collect and receive all such sum or sums of money from the United States Treasury Department, or its authorized agents, which are due and payable to me, or which may be awarded me by the Hon. Hugh McCulloch, as Secretary of the Treasury, on account and by virtue of my having served as aid to *be* assistant special agent of the Treasury Department in the State of Florida and adjoining counties of the State of Georgia, in and during the years A. D. eighteen hundred and sixty-five and eighteen hundred and sixty-six.

And for the purposes aforesaid, giving and granting to my said attorney full power and authority to do all acts and sign in my name all receipts necessary to be done in the premises, or that, in the judgment of my said attorney may seem proper to be done, in as full and ample a manner as I might or could do if personally present. And I do hereby ratify and confirm all the acts of my said attorney, carefully done as aforesaid in the premises; and I do hereby revoke and cancel any and all power of attorney previously executed by me inconsistent or antagonistic to this my power of attorney to said George Peabody Este.

In witness whereof I have hereunto set my hand and affixed my seal this sixth day of April, A. D. 1867.

S. B. CABELL. [SEAL.]

Signed & sealed in presence of—
GEO. P. ESTE,
H. S. COMMAGER.

[50-cent. stamp. 6th Apr. '67, S. G. C.]

DISTRICT OF COLUMBIA,
City of Washington, ss:

On this 6th day of April, A. D. 1867, before the undersigned, a notary public in and for said District, personally came Samuel G. Cabel, personally known to me, the constituent in the foregoing power of attorney, and acknowledged the signing and sealing thereof to be his voluntary act and deed.

In witness whereof I have hereunto subscribed my name and affixed my seal this 6th day of April, A. D. 1867.

S. G. CABELL.

214 [117] Subscribed and acknowledged before me on the 6th day of April, 1867, at the city of Washington, D. C.

JAMES H. CAUSTEN,
Notary Public.

[5-ct. int. rev. stamp. Apr. 6. J. H. C.]

(Indorsed:) S. G. Cabell. Power of attorney to Geo. P. Este. April 6, 1867.

(Copy. A. B.)

XIX.

$4,881.10.]

WASHINGTON, *May* 27, 1867.

Received from Hugh McCulloch, Secretary of the Treasury, draft No. 235 of F. E. Spinner, Treasurer, U. S. special agent, on the Treasurer of the United States at Washington, for the sum of four thousand eight hundred and eighty-one dollars and ten cents, ($4,881.10), which amount is received and accepted by me as full compensation for all information furnished, services performed, or expenses incurred by me or those acting under or with me, in relation to any and all cotton which has or which may hereafter come into the possession of the Treasury Department, in relation to which I have or might or may set up any claim. And I hereby agree and bind myself to hold harmless the Government of the United States and all its officers and agents, against all claims, suits, or proceedings of any kind whatsoever, on account of the sum of money so paid me, or the cotton whence the same was derived.

S. G. CABELL,
Per GEO. PEABODY ESTE,
His Attorney in fact, though not to

XX.

No. 235, M. C. B.] TREASURER'S OFFICE,
$4,881.10.] *Washington, May 27th*, 1867.

Pay to the order of George Peabody Este, att'y for Sam'l G. Cabell, four thousand eight hundred and eighty-one $\frac{10}{100}$ dollars and charge to account of

F. E. SPINNER,
Treasurer, U. S. Special Agent.

To TREASURER U. S.,
Washington, D. C.

(Endorsed:)

GEO. PEABODY ESTE,
Attorney for S. G. Cabell.

215 [118] (Copy. A. B.)

XXI.

UNITED STATES COTTON AGENCY,
CUSTOM HOUSE, NEW YORK.
New York, May 30th, 1867.

SIR: I have this day received your letter of the 27th instant, relative

to expenses on shipment of 272 b. cotton, received from S. G. Cabel, sp'l agent, &c., from Jacksonville, Fla., and enclose herewith copies of the b. ladings of said shipments, upon which you will find the amount mentioned in your letter, viz, $5,0373.51, endorsed as accrued expenses before shipment, and which it was necessary to pay here upon delivery of the cotton.

The vouchers for disbursements at Jacksonville have never been forwarded to this agency, and the amount indicated on the b. l's was receipted for by the consignees of the vessel, which vouchers are only a recapitulation of the charges on the same and *same and* give no further information as to the character of the charges.

This matter has been the subject of frequent correspondence with the Department, and accrued expenses on shipments have been paid here in accordance with its instructions, it being necessary in order to obtain possession of the cotton, and the agent shipping should be accountable for such disbursements.

Very respectfully, your ob't s'v't,

FR'S ROBINSON,
Sp'l Agt., &c.

Hon. H. McCULLOCH,
Secretary of the Treasury, Washington, D. C.

(Indorsed:) Fr's Robinson, sp'l ag't, May 30, '67. In relation to charges on 272 b. cotton, on c. from S. G. Cabell, Jacksonville, and enclosing copies of b. ladings. Mr. Kfmry. R. 570. May 31, 1867.

(Copy.)

[VIGNETTE.]

U. S.

95 bales cotton, 48,321 lbs., expenses, wh'f'ge, storage, weighing, etc.—84 B. C. *a* 1.15		$96 60
Repairing bagging, 95 bales, *a* 1.50		142 50
Wh'f'ge & storage, 11 bales 3⅔ months, *a* 25c		16 50
I. O. Sammis & Co.'s bill, expenses on 17 b		174 20
P. Moody's bill, expenses on 10 b., *a* $5.65		56 50
Insurance on $10,000 worth, *a* 1½ cents premium		150
		$636 30
R.R. transportation on 59 bales.		373 50
		$1,009 80
Insurance on $1,009.80 *a* 1½%		15 00
		$1,024 80
Freight paid in New York		724 81
		$1,749 61

Correct.

Shipped, in good order and well conditioned, by Joseph Remington, on board the schooner called the Queen of the West, whereof is master, now lying in the port of Jacksonville, and bound for New York, to say: ninety-five (95) square b. cotton, 48,321 lbs. more or less, wet & country damaged, not accountable for cotton ropes & bagging, weights & contents unknown. Expenses ($1,009.80) one thousand & nine $\frac{80}{100}$ dollars, and freight as below, for account of S. G. Cabell, treasury ag't, being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the port of New York (the dangers of the seas only excepted), unto Simeon Draper, cotton agent, or to his assigns, he or they paying freight for the said cotton one cent and a half per pound, without primage and average accustomed. In witness whereof the master or purser of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Jacksonville the 25th day of January, 1866.

(Signed) JOHN A. ROGERS.

F. R.

216, 217 [119, 120] (Copy.)

[VIGNETTE.]

U. S.

12 bales (sq'r) S. I.....	5,962 lbs.	
165 " " upland	86,139 "	
177	92,101 lbs.	

Expenses.

R. R. transportation, 177 bales.	$1,109 50
Wh'f'ge, storage, weighing, etc., *a* 1.15	203 55
Repairing bagging, etc	265 50
Insurance on $20,000.00 worth, *a* 1½%.....	300 00
	$1,878 55
Insurance on advances.....	28 18
Freight	1,381 51
	$3,288 24

Shipped, in good order and well conditioned, by Joseph Remington, on board the brig called the Lewis Clark, whereof is master, now lying in the port of Jacksonville, and bound for New York.

To say:

Twelve square bales S. I. cotton ..... 5,962 lbs.

One hundred and sixty-five (165) square bales, U..... 86,139 " more or less, wet or country damaged, not accountable for rotten rope & bagging. Weight and contents unknown.

For account S. G. Cabbell, Treasury agent, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York (the dangers of the seas only excepted), unto Simeon Draper, cotton agent, or to his assigns, he or they paying freight for the said cotton one & a half cents per pound, charges as per margin, with primage and average accustomed.

In witness whereof the master or purser of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Jacksonville, the 20th day of January, 1866.

(Signed) JAS. B. BARTLETT.

Correct. F. A.

[121, 122 index.]
218, 219 [123] (Copy.)

United States Court of Claims. In vacation after December term, 1867.

G. B. LAMAR
vs.
THE UNITED STATES.

WASHINGTON, D. C., *October* 27, 1868.

It is hereby stipulated that the testimony in this cause may be taken in Savannah, Georgia, on and after the 1st of November, 1868, without formal notice to either party, if the counsel for the opposite party shall be present.

HUGHES, DENVER & PECK,
Solicitors for Claimants.
ROBT. J. HALE, *Special Counsel, &c.*

G. B. LAMAR
vs.
THE UNITED STATES.

Chatham superior court. May term, 1863.

Charter of the Importing and Exporting Company of the State of Georgia, with evidence for defendants.

Declaration of Gazaway B. Lamar and others, citizens of the State of Georgia, to obtain a charter for the Importing and Exporting Company of the State of Georgia.

STATE OF GEORGIA, *Chatham County:*

We, Gazaway B. Lamar, Charles A. L. Lamar, John C. Ferrill, Joseph Burke, Abraham A. Solomons, Marmaduke Hamilton, Edmund Martin, Augustus S. Jones, George C. Freeman, and George W. Wylly, citizens of the State of Georgia, do declare that we have formed an association for the encouragement of direct trade with foreign countries, and that the purpose of such association is to carry on the business of importing and exporting goods, wares, and merchandise from and to foreign countries in vessels propelled by steam or sails; that we desire to be incorporated by the name and style of the Importing and Exporting Company of the State of Georgia; that the amount of capital to be employed by us will be the sum of two millions of dollars; and that we desire to be incorporated for the space and term of thirty years; and that the principal office and place of doing business of said association, when incorporated, is to be in the city of Savannah, county of Chatham, and State of Georgia.

In witness whereof we have subscribed our names to this dec-
220 [124] laration this eleventh day of June, in the year of our Lord one thousand eight hundred and sixty-three.

GAZAWAY B. LAMAR.
J. BURKE.
MARMADUKE HAMILTON.
GEO. C. FREEMAN.
GEO. W. WYLLY.
A. A. SOLOMONS.
AUGUSTUS SEABORN JONES.
JOHN C. FERRILL.
C. A. L. LAMAR.
EDMUND H. MARTIN.

STATE OF GEORGIA, *Chatham County:*

Personally appeared Gazaway B. Lamar, president of the association called the Importing and Exporting Company of the State of Georgia, who, having duly affirmed according to his religious belief, deposeth and saith that the amount of capital actually paid in and employed by said association is two hundred and fifty-six thousand dollars, paid in in cotton, as below; which said cotton is worth the sum of two hundred and fifty thousand dollars at its present market value, the same being more than ten per cent. upon the amount of the capital of said association.

GAZAWAY B. LAMAR,
President I. & E. Company.

Sworn to before me this 11th day of June, 1863.

JNO. M. B. LOVELL,
Not. Pub. C. C.

1,418 bales cotton, 736,088 pounds, valued at $256,425.76, besides other property.

Filed June 11, 1863.

WM. H. BULLOCH,
Clerk S. C. C. C.

Recorded June 11, 1863.

I certify that the above declaration of Gazaway B. Lamar and others, to obtain a charter for the Importing and Exporting Company of the State of Georgia, has been published in the Daily Morning News, of Savannah, Georgia, once a week for two months, commencing on the 15th day of June, 1863, and ending 15th of August, 1863.

W. T. THOMPSON,
Editor Daily Morning News.

SAVANNAH, *January* 20, 1864.

THURSDAY, *January* 21, 1864.

The court met pursuant to adjournment. Present, his honor William B. Fleming, judge. The court was opened in due form of law by Benjamin L. Cole, sheriff.

221 [125] Chatham superior court. January term, 1864.

In the matter of the application of Gazaway B. Lamar et als. for charter of the Importing and Exporting Company of the State of Georgia.

STATE OF GEORGIA, *Chatham County:*

In the superior court of Chatham County, upon the declaration and petition of Gazaway B. Lamar, Charles A. L. Lamar, John C. Ferrill, Joseph Burke, Abraham A. Solomons, Marmaduke Hamilton, Edmund Martin, Augustus S. Jones, George C. Freeman, and George W. Wylly, citizens of the State of Georgia, for the grant of a charter for an association for the business of exporting and importing goods, wares, and merchandise from and to foreign countries, by the name and style of the Importing and Exporting Company of the State of Georgia, a copy of the declaration, affidavit, and certificate of publication having been placed before the judge of said court, and the law appearing in all things to have been complied with, and the court being satisfied that the application is legitimately within the purview and intention of the code, it is ordered that the application of the declarants and petitioners be, and the same is hereby, granted, and that the declarants and petitioners are hereby incorporated by the style of the Importing and Exporting Company of the State of Georgia; and it is further ordered that the clerk of this court do furnish said declarants with a certified of the declaration, affidavit, certificate of publication, and of this order; and that the same shall be

held and received as evidence of the charter of said corporation in any court of this State.

W. B. FLEMING,
Judge E. D. Geo.

JANUARY 21, 1864.

STATE OF GEORGIA, *Chatham County:*

I, Richard W. White, clerk of the superior court of the county of Chatham, in the State aforesaid, do hereby certify that the foregoing instrument of writing is a true and faithful copy of the proceedings for a charter of incorporation of the Importing and Exporting Company, as appears on file and of record in this office.

In witness whereof I have hereunto set my official signature, with the seal of said court, this thirtieth day of April, anno Domini one thousand eight hundred and sixty-nine.

[SEAL.]

RICHARD W. WHITE,
Clerk Superior Court Chatham County.

[5-ct. int. rev. stamp, canceled.]

G. B. LAMAR
vs.
THE UNITED STATES.

It is stipulated and agreed that the foregoing declaration, affidavit, certificate of advertisement, and order of court for the charter of incorporation of the Importing and Exporting Company of the State of Georgia, under the certificate and seal of the clerk of superior court for the county of Chatham, Georgia, shall be admissible as evidence in above-entitled case without being further authenticated, subject to the objection to the record itself, and all legal objections.

JOHN B. KERR,
Of Counsel for Defendants.
JNO. O. FERRILL,
For Claimant.

SAVANNAH, GEORGIA, *May*, 1869.

222 [126] [Indorsement.]

Filed in the case of G. B. Lamar vs. The United States, and to be used in evidence in said cause, May 6, 1869.

A. W. STONE,
U. S. Commissioner and ex officio Commissioner of Court of Claims.

$3.50 paid.

J. K. P. CARR,
For R. W. WHITE.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES.

The testimony of A. A. Solomons for the United States.

STATE OF GEORGIA,
City of Savannah, ss:

On the tenth day of April, A. D. eighteen hundred and sixty-nine, personally came A. A. Solomons, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the narratives contained in the within deposition were written down by the commissioner and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, and Hon. John B. Kerr appeared for the United States, and John O. Ferrill, esq., for the claimant.

[SEAL.] HENRY T. McDOWELL,
Commissioner of the Court of Claims for the State of Georgia.

The deposition of A. A. Solomons, taken at the request of the United States before Henry T. McDowell, commissioner for Georgia, at Savannah, Georgia, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of G. B. Lamar vs. The United States.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is A. A. Solomons; my occupation druggist; my age is fifty-three; my residence the past year has been in Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

Direct examination by Hon. JOHN B. KERR, assistant special counsel for the United States:

Question. You have been for many years a resident of Savannah, have you not?

Answer. Yes, sir.

Question. During the rebellion were you in business here?

Answer. Yes, sir.

Question. How long have you known the claimant in this case?

Answer. I have known him by reputation for twenty or twenty-five years. I have known him well only since a couple of years
223 [127] before the war, owing to his residing away from Georgia, in the city of New York.

Question. Have you any knowledge of cotton transactions where the claimant was engaged, and were you in any way connected with him officially in regard to such matters?

Answer. I have no distinct knowledge of any transaction, but an imperfect knowledge of some transaction where Mr. Lamar was either the purchaser or the seller.

Question. Was he or not at the head of one of the large incorporations in the State of Georgia; and, if so, what was that incorporation?

Answer. He was president of the Georgia Importing and Exporting Company.

Question. What position did you hold in that company?

Answer. I was one of the directors.

Question. How many directors were there?

Answer. I do not remember exactly the number. As well as I can recollect Mr. John Richardson was one, Mr. Marmaduke Hamilton, Mr. Charles A. L. Lamar (son of the claimant), and, I think, at one time, Mr. John C. Ferrill.

Question. As one of the directors had you occasion to know the business of this company at all accurately, or was it left to others; and, if so, to whom?

Answer. I attended the meetings on several occasions, and I remember very well that the books were there lying on the table, and they may have been imperfectly examined occasionally. I have no recollection of their being examined thoroughly by any one of the directors; but they were always upon the table and accessible.

Question. To whose discretion was the whole subject-matter in regard to the interests of the company remitted?

Answer. Mr. G. B. Lamar was the president, and he submitted these matters to the directors. So much confidence was felt in Mr. Lamar that his acts were approved of generally by the board. He always submitted to the board what he had done or what he was about to do.

Question. As one of these directors, have you any knowledge of the number of steam-vessels owned by this company, or where they were built?

Answer. No, sir. I know that there was a correspondence on the subject of vessels in England, but my recollection is indistinct as to the matter, except that one of the vessels was at the mouth of one of the rivers somewhere in this section of country, but whether she got in or not I do not know.

Question. Could you state the names of any of those steamers, or how many there were?

Answer. I could not state the names of them.

Question. Did the correspondence include more than one?

Answer. Yes, sir.

Question. With whom was this correspondence held, to the best of your recollection?

Answer. I cannot remember; there was one party, Henry Lafone, I think his name was.

Question. Who was this Mr. Lafone?

Answer. I presume that he was an agent in England for building and fitting up these steamships.

Question. Have you any knowledge of the amount of money paid in upon the stock kept by the company, or about the amount?

224 [128] Answer. I cannot approximate.

Question. Was it or not a very large amount—over a million of dollars actually paid in and invested?

Answer. I am unable to state.

Question. Were you from time to time advised of the purchase of cotton, to a large extent, in the name of the Importing and Exporting Company, of which you were one of the directors?

Answer. I knew of a lot of cotton in the vicinity of Thomasville, and probably another lot in the vicinity of Macon.

Question. To what amount were they?

Answer. I do not remember. I presume there must have been a couple of thousand bales. It was a large lot of cotton, and I know that there was some correspondence with reference to it. There was a large lot of cotton burned, I think, in the vicinity of Thomasville.

Question. Was or not this company one of the grand schemes for regulating the exchanges in this section of country, and so intended?

Answer. I do not think it had an important bearing; it was looked upon as rather small compared with companies in Charleston and elsewhere in the confederacy.

Question. State the scope and general objects of the company and its action as coming within your knowledge.

Answer. The intention was (as with the other companies) for the purpose of importing goods and exporting cotton, I suppose. That was the object of all these companies during the war.

Question. Have you any knowledge of return cargoes and the sales of them? If so, state.

Answer. I have no knowledge of any return cargoes. My impression is that it was looked upon as very poor stock before the war closed. It is a difficult matter for me to say why, but it was the impression resting on my mind.

Question. How much stock did you hold in it yourself?

Answer. I think I had ten shares; each share was $1,000. I am answering vaguely.

Question. Are they still in your possession?

Answer. Yes, sir.

Question. Have you ever had occasion to know what statements, if any, were made of the concerns of this company by the president and acting agent of it (Mr. Lamar) to the directors?

Answer. I cannot give you the particulars of any statement, except that his habit was to make them. His correspondence was kept in a book. His habit was to communicate to the directors, and to reply to questions asked; but I do not remember anything about what communications were made, except that we would confer together.

Question. Is it within your knowledge that efforts were made from time to time among the stockholders throughout Georgia, to get a balance-sheet, so as to ascertain what, if any, was due upon their stock?

Answer. I had heard something of the kind, but nothing that I know of.

Question. As a director, have you had placed before you a balance-sheet, so as to know the amounts of cotton respectively, or the profits or losses attached to the company?

Answer. I do not know that they ever placed before us any sheet of that kind; I only know that the books were there to be examined by us at any time.

225 [129] Question. Were you as stockholder and director made aware of the fact that Mr. Lamar, as president of this company, was engaged himself largely in the purchase of cotton?

Answer. Yes, sir; I know that from a transaction which I stated before; that there was a large purchase made from the company or a sale to the company by Mr. Lamar; I do not know which.

Question. Were or not the individual matters and the company's matters carried on at the same time and through the same officers?

Answer. I do not think so.

Question. State how they differed; in what way.

Answer. There was this distinctness: There was a sale made from one party to the other; I had no idea that there was any connection whatever with them.

Question. What other position did Mr. Lamar occupy at this time except as president of this company?

Answer. He was president of the Bank of Commerce.

Question. Were you a director in the bank?

Answer. I was neither a director or stockholder.

Question. Was the bank, as a corporation, engaged in dealing in cotton within your knowledge?

Answer. I have no knowledge of it.

Question. Among your directors, who were the most active in the management of the cotton speculation?

Answer. I am unable to say; my impression is that Mr. Richardson would have known more of it, from its being a business that he was accustomed to; he was looked upon as a man of fine business knowledge.

Question. Were any of your directors sent to England in charge of the company's matters?

Answer. Not to my knowledge.

Question. Had you occasion to note the absence during the war of one of the directors of this company, Mr. C. A. L. Lamar?

Answer. No, sir.

Question. Were or not communications from him, as connected with the company while in England, brought to your notice?

Answer. No, sir; I do not remember.

Q. Who were the active purchasers in behalf of Mr. Lamar, as president of this company and agents, outside of Savannah here? If you know, name them.

Answer. There was a relative of Mr. Lamar—I supposed he was a relative; I forget his name now—who had a good deal to do with purchasing cotton for him.

Question. Do you know whether it was for the company or for himself individually?

Answer. My impression is that his transactions were for Mr. Lamar; he may have bought some for the company; I do not remember.

Question. Can you name any other agents connected with the company?

Answer. That is the only one, and that is imperfect.

Question. Please state whether the company, its correspondents, and its agencies were not altogether within the discretion of the president, Mr. Lamar, claimant in this case.

Answer. I cannot state that side of it because, as I mentioned before, the matters connected with the company were submitted to the board.

Question. Have you any knowledge of how the financial matters of the company were managed?

Answer. I believe that Mr. Lamar was the financial manager of the concern.

226 [130] Question. You knew Mr. Lamar from the beginning to the end of the rebellion?

Answer. Yes, sir; I frequently saw him, though we had no intimacy.

Question. With this knowledge, state what was his course of action in regard to aiding and abetting the rebellion.

Answer. I can state nothing specifically, except the belief that he desired the success of the confederacy, and all his actions were in accordance with this.

Question. Were you acquainted with Mr. Lamar's handwriting?

Answer. Yes, sir; I have seen it on bank-bills more than in any other way.

Question. Please look at this paper, which the commissioner will mark "Exhibit I," directed to C. G. Memminger, esq., Montgomery, Alabama, under date of April 5, 1861, and state whether the body of this paper and the signature thereto is or not in the handwriting of the claimant in this case.

Answer. I can only state my belief that this is Mr. Lamar's signature. I have not sufficient recollection of his handwriting to say that the body of the letter is in his handwriting.

Question. Please look at paper marked by the commissioner "Exhibit K," addressed to Hon. C. G. Memminger, Montgomery, Alabama, dated at New York, April 6, 1861; and at the paper addressed to the same party from New York, under date of April 8, 1861, marked "Exhibit L," and state whether both these letters, in the bodies of them and in the signatures thereto, are or not in the claimant's handwriting.

Answer. I am not sufficiently familiar with Mr. Lamar's handwriting to say exactly. All three of the papers are alike in the bodies of them; but there is a marked difference in the signature to the paper marked "Exhibit I" from the other two. There is more irregularity in the signatures than I would have supposed from one of his business habits.

(Counsel for the claimant objects to the entire direct examination as leading, irrelevant, incompetent, and hearsay.)

Cross-examination by JOHN O. FERRILL, Esq., counsel for claimant:

Question. Please state at what time this Exporting and Importing Company was chartered.

Answer. It was chartered before the war.

Question. Please state whether or not, within your knowledge, this company was organized for the purpose of importing direct from Europe, without bringing goods through New York. Was not the idea to bring trade directly to Savannah?

Answer. That was the object. That was my impression at the time.

Question. So far as you know, can you not state that this investment in cotton, made during the war, was for the purpose of carrying out the original project after peace was declared?

Answer. That was the object of whatever investments of that kind were made. There were no speculations by this company at all in cotton.

Redirect examination:

Question. Do you mean to say that the company was actually organized before the war, or only acting under an old charter procured before the war?

Answer. I mean to say it was chartered before the war; that is my recollection. It was not organized until after the war.

227 [131] Question. Was there within your knowledge any additional legislation in regard to the charter reviving it?

Answer. I have no knowledge of it.

Question. Is it or not within your knowledge that the stock of this exporting and importing company was made a subject of speculation throughout the whole of this region of country?

Answer. I think there was very little speculation in it. I think the operations of the company were very quiet.

Question. What was the number of the stockholders?

Answer. I do not remember; but I think the number was large.

Question. As a director were you not acting more as a matter of form than otherwise?

Answer. Mr. Lamar was deemed competent to manage the concern, though he submitted his actions to us.

Question. Have you ever realized anything from this company?

Answer. No, sir.

EXHIBIT I.—HENRY T. MCDOWELL, *Commissioner Court of Claims.*

NEW YORK *Apl 5th* 1861

C. G. MEMMINGER Esq *Montgomery Ala*

D'R SIR I have indubitable authority to know that the steamer Atlantic has been chartered to take a full complement of troops southward—& that the greatest dispatch is being used to embark them & their supplies from Fort Hamilton——

They may be intended for Savannah, (she draws too much water for Charleston,) or Fort Pickens—but my impression is that they are for the Mississippi—to recover the forts or to blockade the mouths of the river——

But I need not make suggestions—the fact is what the authority South need to know—& they can judge for themselves——

Yurs &c with regard,

G B LAMAR

U S stocks fell 2 pr ct day in consequence of rumors—not aware of the fact above.

EXHIBIT K.—HENRY T. MCDOWELL, *Commissioner Court of Claims for Georgia.*

NEW YORK, *Ap 6th* 1861.

Hon C G. MEMMINGER *Montgomery*

SIR I now enclose the bill of the Engravers for the Treasury Notes which they have forwarded $540 22 for which, please send a Check——

I find the Steamers chartered here, by the Administration, are taking Flying artillery & horses!!! some say it is for Texas—but I do not suppose any body knows—any thing reliable about them——

I was trying to get a round Robin made up here to take 500000$ of your Bonds & had a good prospect of success—until this warlike feeling & demonstrations took place yesterday—On what terms would you
228 [132] be willing to dispose of that amount? Putting the Bonds at par, what Commission would you allow on the negotiation?

It would be "a card" to have part of the loan taken here—& I think it may succeed if things get more peaceable——

Yurs &c

G B LAMAR

EXHIBIT L.—HENRY T. MCDOWELL, *Commissioner.*

NEW YORK *Apl 8th* 1861

Hon C G. MEMMINGER *Montgomery,*

SIR I have yrs 3d inst. & am gratified that the Engraving so far as I have had to do with it gives satisfaction——

I saw the Engravers about printing more of the 100s & 50s of Treasury Notes—They say they cannot print four notes on the sheet—without too much delay equal to two weeks—whilst by putting only two on a sheet they can finish 1000 Impressions by next monday and to save time, I ordered 1000 Impressions and you can increase the quantity, if you please—these will be forwarded without delay—It will cost no more to print the full plate of four, than the two 100s & 50s—& if you have a safe place to keep them, the 500s & 1000s might be put away—till wanted——

I am &c

G B. LAMAR

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

A. A. SOLOMONS.

Sworn to and subscribed before me on the 10th day of April, A. D. 1869.

[SEAL.] HENRY T. McDOWELL,
Commissioner of the Court of Claims for Georgia.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES.

The testimony of Z. N. Winkler, for the United States.

STATE OF GEORGIA, *City of Savannah, ss:*

On the twenty-sixth day of April, A. D. eighteen hundred and sixty-nine, personally came Z. N. Winkler, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the narratives contained in the within deposition were written down by the commissioner, and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

229 [133] The adverse party was notified, and Hon. John B. Kerr appeared for the United States and John O. Ferrill, esq., for the claimant.

[SEAL.] HENRY T. McDOWELL,
Commissioner of the Court of Claims for the State of Georgia.

G. B. LAMAR
vs.
UNITED STATES.

The deposition of Z. N. Winkler, taken at the request of the United States, before H. T. McDowell, commissioner for Georgia, at Savannah, Georgia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Gazaway B. Lamar vs. The United States.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Z. N. Winkler; my occupation, rice planter; my age is forty; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the United States, JOHN B. KERR, Esq., the witness, says:

I have known the claimant in this case, Mr. G. B. Lamar, from my boyhood up to the present time by sight and reputation, and personally for a few years past. I was employed here in the city and in the Bank of Commerce from August to the 21st December, 1864. Mr. Lamar was president of the bank. Beyond general repute I can't speak, but so far as I am able by my acquaintance with the current business of the city he was also president of the Georgia Importing and Exporting Company. I was acting teller of the Bank of Commerce, and in the constant habit of cashing checks during all the while. I have no knowledge of any checks in the name of Mr. Lamar as president of the company to which I have referred, as they were all in the routine of business in his individual name. I held no stock in the company, and have no knowledge of its business. While I was teller of the bank the affairs of this company were never brought to my notice, nor did any matter with regard to Mr. Lamar's cotton transactions come within my knowledge.

Question. Please look upon the following letters of April 5th, 6th, and 8th, 1861, attached to the deposition of A. A. Solomons, and state whether you are acquainted with the handwriting and signature of Mr. G. B. Lamar, and in what manner.

Answer. I have often seen him, and, as one of the bank officers, his signature is familiar to me.

Question. State whether these letters, addressed to Hon. C. G. Memminger, Montgomery, Alabama, are or not, in their body and in the signature, in the handwriting of Mr. G. B. Lamar.

Answer. The signature of all three is his, and also the body of the writing.

Question. What was Mr. Lamar's course in regard to the questions at issue during the late rebellion?

Answer. I have no definite knowledge, not having been thrown in intercourse with him but a few months.

230 [134] (John O. Ferrill, counsel for the claimant, objects to all the foregoing examination, the evidence being hearsay and secondary, and to all questions as to the status and doings of the claimant as incompetent, the Government alone having the right to call him as a witness in his own case.)

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I know nothing else.

Z. N. WINKLER.

Sworn to and subscribed before me on the 26th day of April, A. D. 1869.

[SEAL.] HENRY T. McDOWELL,
Commissioner of the Court of Claims for Georgia.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES.

The testimony of Archibald C. Davenport for the United States.

STATE OF GEORGIA,
City of Savannah, ss:

On the twenty-seventh day of May, A. D. eighteen hundred and sixty-nine, personally came Archibald C. Davenport, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the narratives contained in the within deposition were written down by the commissioner, and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, and Hon. John B. Kerr appeared for the United States and John O. Ferrill, esq., for the claimant.

[SEAL.] AMHERST W. STONE,
United States Commissioner, and ex-officio Commissioner of the Court of Claims for the State of Georgia.

The deposition of Archibald C. Davenport, taken at the request of the United States, before Amherst W. Stone, commissioner for Georgia, at Savannah, Georgia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of G. B. Lamar vs. The United States.

First general interrogatory by the commissioner. Please to state your

name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Archibald C. Davenport; my occupation, teller of Central Railroad Bank; my age is forty-nine years; my residence the past year has been in Savannah, Georgia; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and am in no degree related to the claimant.

Being interrogated by the counsel for the United States, Hon. JOHN B. KERR, the witness says:

I have known the claimant since my earliest boyhood. I was teller of the Bank of Commerce from its organization in 1856 to Febru-
231 [135] ary, 1862, when I left my position to go into the Confederate service. At the time I left the bank Mr. Lamar was its president, and he had been for some time—how long I don't remember. I paid all checks, being the only teller of the bank. During this time I never heard officially of the Georgia Exporting and Importing Company, beyond a rumor on the streets; who the officers or members of it were I do not know, nor do I know to this day. Mr. Lamar did business through that bank, but at no time did I ever see or pay a check of his otherwise than individually. All his checks on the Bank of Commerce were individual checks.

Cross-examination waived.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not, and never did.

A. C. DAVENPORT.

Sworn to and subscribed before me on the 27th day of May, A. D. 1869.

[SEAL.] AMHERST W. STONE,
United States Commissioner, and ex-officio Commissioner of the Court of Claims for Georgia.

Court of Claims.

To ARCHIBALD C. DAVENPORT:

You are hereby commanded to appear before Henry T. McDowell, commissioner appointed by this court to take depositions, on the 27th day of May, A. D. 1869, at 3.30 o'clock in the afternoon, at his office in the Battersby building, corner of Bay and Drayton streets, Savannah, in the county of Chatham and State of Georgia, then and there to testify in the case of G. B. Lamar against the United States now pending in this court.

Fail not of appearance at your peril.

By order of the Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 27th day of May, A. D. 1869.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk of the Court of Claims.

[Indorsement.]

I have this day served the within subpœna personally upon Archibald C. Davenport, at 12 m., and paid him one dollar and fifty cents as witness's fees, which he demanded.

Savannah, Georgia, May 27, 1869.

The return of

J. A. BATES, *Deputy Marshal.*

Service and tender paid by counsel for defendants.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES.

The testimony of William B. Adams for the United States.

STATE OF GEORGIA,
City of Savannah, ss:

On the 30th day of April, A. D. 1869, personally came William
232 [136] B. Adams, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the narratives contained in the within deposition were written down by the commissioner, and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, and Hon. John B. Kerr appeared for the United States, and John O. Ferrill, esq., for the claimant.

[SEAL.] HENRY T. McDOWELL,
Commissioner of the Court of Claims for the State of Georgia.

The deposition of William B. Adams, taken at the request of the United States, before Henry T. McDowell, commissioner for Georgia, at Savannah, Georgia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Gazaway B. Lamar vs. The United States.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is William B. Adams; my occupation, commission merchant; my age is forty-three years; my residence the past year has been in Savannah, Georgia; I have no interest, direct or indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

Being interrogated by the counsel for the claimant, the witness says:

I have known the claimant in this case many years; I knew him before he went to New York, and since his return to Savannah, in 1861. I have been a commission merchant for fifteen years.

Question. Do payments of freight at the railroads and charges at the cotton-press for cotton received in the course of business, as a commission merchant, necessarily carry with them individual ownership of cotton so transmitted under usage of trade here?

(Objected to.)

Answer. Certainly not. It would be no evidence of ownership of itself. I was here from 1861 to 1865, and met, in the course of business, the claimant in this case, without, however, having any personal knowledge of his being president of the Georgia Exporting and Importing Company. I heard of the stock as being in the market, without making any investments in it myself. I have no recollection of the fluctuations of it, though I heard of it being sold about the city.

(Counsel for claimant objects to all the foregoing examination on the ground of its being irrelevant and incompetent.

Cross-examination waived by John O. Ferrill, esq.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

WM. B. ADAMS.

233 [137] Sworn to and subscribed before me on the 30th day of April, A. D. 1869.

HENRY T. McDOWELL,
Commissioner of the Court of Claims for Georgia.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES.

The testimony of George C. Freeman for the claimant.

STATE OF GEORGIA,
City of Savannah, ss:

On the 6th day of May, A. D. 1869, personally came George C. Freeman, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the narratives contained in the within deposition were written down by the commissioner, and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, and Hon. John B. Kerr appeared for the United States, and John O. Ferrill, esq., for the claimant.

HENRY T. McDOWELL,
Commissioner of the Court of Claims for the State of Georgia.

The deposition of George C. Freeman, taken at the request of the United States, before Henry T. McDowell, commissioner for Georgia, at Savannah, Georgia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Gazaway B. Lamar vs. The United States.

First general interrogatory by the commissioner. Please to state your

name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is George C. Freeman; my occupation, merchant; my age is thirty-five years; my residence the past year has been in Savannah, Georgia; I have no interest, direct or indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

Being interrogated by the counsel for the United States, JOHN B. KERR, esq., the witness says:

I have known the claimant for seven or eight years. I was nominally one of the original corporators of the Georgia Exporting and Importing Company, going into operation in 1863. The claimant in this case, Mr. Lamar, was president of the company. I do not know whether the stock that I held in it was my own, or the firm in which I was interested as a member—Champion & Freeman. I don't remember the amount of the capital stock; but it was all paid in to the best of my recollection, not being a director of the company; while a stockholder I had the usual means of making inquiries of the president and directors in regard to the concerns of the company, but I have no recollection of availing myself of it.

Question. Was or not the whole subject-matter in connection with the interests of this company entirely remitted to the hands and discretion of Mr. Lamar, the claimant in this case?

Answer. It was left with the president and board of directors. I had no returns for my investment, having sold the stock in a very short time.

234 [138] Question. Was Mr. Lamar, while president of this company, engaged largely in individual cotton speculation?

Answer. I know nothing whatever in regard to the results of the company's transactions, nor of those of Mr. Lamar individually. Mr. C. A. L. Lamar is now deceased; so is Joseph Burke, a capitalist here in Savannah. The rest of the corporators are here in Savannah, except Edward Martin and Augustus S. Jones, of whom I cannot speak positively.

Question. Was or not Mr. Lamar well known in this community as zealous in everything that he undertook; and did he or not give all his energies in aid of Southern independence?

Answer. To the first clause I answer that was his reputation; to the last clause I answer I cannot tell; I do not know.

(Claimant's counsel objects to all the foregoing examination as being irrelevant and incompetent; to all questions as to third parties as being irrelevant; and to all questions as to the claimant as being incompetent, he, himself, being the best witness, and it being in the power of the Government alone to call him in his own case.)

Cross-examination by JOHN O. FERRILL, Esq., counsel for claimant:

Question. Do you or not know that this company was incorporated before the war for the purpose of establishing direct trade between this city and Europe?

Answer. I do not.

(Objected to.)

Question. Do you or not know that the books of the importing company were seized by the United States Government and all the cotton reported thereon taken possession of by the same authorities?

Answer. I do not.

Question. Do you or not know that the city of Savannah was surrendered by the municipal authorities to the forces of the United States under promise of protection to person and private property?

Answer. I do not know, not being one of the board of aldermen, and not being here.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. No.

GEO. C. FREEMAN.

Sworn to and subscribed before me on the 6th day of May, A. D. 1869.

[SEAL.] HENRY T. McDOWELL,
Commissioner of the Court of Claims for Georgia.

In the Court of Claims.

G. B. LAMAR
vs.
THE UNITED STATES.

The testimony of Walter F. Bingham for the United States.

STATE OF GEORGIA,
City of Savannah, ss:

On the 20th day of April, A. D. 1869, personally came Walter F. Bingham, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the narra-
235 [139] tives contained in the within deposition were written down by the commissioner, and then read by him to the witness, who then subscribed the deposition in the presence of the commissioner.

The adverse party was notified, and John B. Kerr, esq., appeared for the United States, and John O. Ferrill, esq., for the claimant.

[SEAL.] AMHERST W. STONE,
United States Commissioner, and ex-officio Commissioner of the Court of Claims for the State of Georgia.

The deposition of Walter F. Bingham, taken at the request of the United States, before Amherst W. Stone, commissioner for Georgia, at Savannah, Georgia, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Gazaway B. Lamar vs. The United States.

First general interrogatory by the commissioner. Please to state your name, your occupation, your age, your place of residence the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry; and whether and in what degree you are related to the claimant.

Answer. My name is Walter F. Bingham; my occupation, clerk; my

age is twenty-four years; my residence the past year has been in the city of Savannah; I have no interest, direct or indirect, in the claim which is the subject of inquiry; and am in no degree related to the claimant.

Direct examination by Hon. JOHN B. KERR, assistant special counsel for the United States:

Question. Please state what your present employment is.

Answer. My present employment here in the custom-house is to make out abstracts, attend to correspondence, make out shipping papers, and register conveyances of vessels.

Question. Are there or not certain books, to which your attention has been called, that were used here by the Confederate authorities during the rebellion?

Answer. Yes, sir; these books appear to have been used by the Confederate authorities. They are the books belonging to the United States, and adopted by the Confederate authorities on taking possession of the custom-house.

Question. Turn to page 226, Conveyances of Registered Vessels, B, and state whether there is or not a bill of sale for a steamer called the Little Ada? If so, state the ownership and other circumstances apparent upon the records in regard to this steamer.

Answer. The copy of the bill of sale shows that David Austin Martin, of Savannah, attorney for Henry Lafone, of Liverpool, England, sole owner of the steamer Little Ada, sells to G. B. Lamar, president of the Importing and Exporting Company of Georgia, all of his right to two-thirds of said steamer for $30,000. The date of the bill of sale is March 17, 1864; and attached to it is a copy of the power of attorney to D. A. Martin, as executed at Liverpool, on the 9th of January, 1864, and the copy of the certificate, certifying to the title of Henry Lafone, by J. C. Johnstone, registrar of the port of Liverpool, which are as follows:

"I, the undersigned, being owner of the ship above described, as stated in the foregoing account of title, hereby appoint David
236 [140, 141] Austin Martin, of Liverpool, in the county of Lancaster, Gent., my attorney in my name and on my behalf to sell the above ship, and to execute and do all such deeds, matters, and things as may be necessary for carrying into effect the power hereby given, declare that the ship shall not be sold for a less sum than six thousand pounds. I declare that the ship may be sold at any place or places out of the United Kingdom of Grt. Britain and Ireland. I declare that the above power shall not be exercised after the expiration of twelve months from the date hereof. In witness whereof I have hereunto subscribed my name and affixed my seal this 9th of January, 1874.

(Signed) "HENRY LAFONE. [SEAL.]

"I, J. C. Johnstone, registrar of the port of Liverpool, hereby certify that the above-written particulars relating to the ship Little Ada, and to the title of the above-mentioned owner, are correct; and I further certify that the said owner has duly subscribed and affixed his signature and seal as above appears.

(Signed) "J. C. JOHNSTONE, *Registrar*."

Question. Has there or not been a great deal of confusion in the papers

belonging to the custom-house as carried on during the rebellion; and, if so, can you turn to the books showing the entries and clearances previous to July, 1865?

Answer. I have had no occasion to refer to the records of the Confederate States until this time. I know nothing of any entries or clearances previous to July, 1865.

Question. According to custom-house usage generally, what becomes of original papers, as to ownership, after being filed with the custom-house officer.

Answer. They are delivered to the owners of the property after the transfer is recorded.

(Claimant's counsel objects to the entire foregoing examination.)

Cross-examination by JOHN O. FERRILL, Esq., counsel for claimant:

Question. Please look at that deed, to which you have just referred, and state whether it is such a deed as would be permitted on the record of the custom-house of the United States.

Answer. It is, with the exception of the copies of the signature of the party making the sale, and the copies of signatures of witnesses.

Question. Is there any evidence of this paper having been signed or witnessed?

Answer. There is not.

Second general interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If you do, state it fully.

Answer. I do not.

WALTER F. BINGHAM.

Sworn to and subscribed before me on the 20th day of April, A. D. 1869.

[SEAL.] AMHERST W. STONE,
United States Commissioner, and ex-officio Commissioner of the Court of Claims for Georgia.

237 [141] GAZAWAY B. LAMAR } No. 3222.
vs.
THE UNITED STATES. }

Receipts of claimant's cotton proved by the deposition of A. L. Lawson.

No. 1—p. 10.—A.

1862. G. B. Lamar to Sav'n', Albany and Gulf R. R. Co.:

Aug. 14.	J. J. W.,	100 bales	cotton, 51,650	.....	$273	75
	P. Ketterer,		guano, J. 401	.....		35
Aug. 21.	K. Bracewell,	5 bales	2,560	.....	13	31
	W. H. Howard,	7 bales	4,700 C. A. C. L.	.....	24	44
	K. Bracewell,	10 bales	5,060 J. 401	.....	26	31
	J. C.,	3 bales	1,400	.....	7	28
		125	13,720			

Aug. 28.	J J W, 30 bales, W. W. C.,		14,621	76 34		
Sept. 7.	K. Bracewell, 22 bales, C. A. L. L.,		10,980	57 11		
	J. J. W., 260 bales, W. W. C.,		139,651	726 60	J. 401.	
	J J W., 14 bales, W. W. C.,		6,860	35 67		
			172,112			895 32
Sept. 3.	Am't earthen salt,	60				
	Capt. Spencer, rice meal,	65			J. 401.	1 25
	6 J. J. W., 24 bales cotton					
	J. J. W.,				21,894 W W C. J. 401	113 85
	J. J. W., 21 do.					
	GBT or 7 TB 13 do.		6,325		C. A. L. L. J. 401	30 36
	J J W					
	GBT 13 J J W 24 25 do.		11,485	59 72		
	34 *AH* W W C.		17,800	92 56	J. 401	
	J. B. Harry, 11 C. W W C.		5,615	26 95		179 23
	579		63,119			$1,565 45

Rec. pay't 8th Oct., 1862.

L. M. HAMILTON.

No. 2—p. 19.—A.

1863. G. B. Lamar to C. R. R. & B. Company:

Jan'y 14.	141 bales cotton, river, 346.75	32,431		$671 07
20.	W. S. Wharley, 95 bags guano,	14 08		
	J. S. Stevens, 30	5 46		
	L. Stevens, 31 (p'd by Charles)	5 67		
21.	202 bales cotton, river, 552 26=506 63			1,068 89
30.	17 do. 39 78	37 10		76 88

238 [142] 1863.

Feb. 5.	J. A. Clarke, 1	35c.		
	A. J. Lane, 30	5 80		
	J. Pourad, 15	2 94		
	L. Wheddon, 15	B'gs guano, 3 01		$35 72
	C. S. Laugnance, 59	11 31		
	G. R. Mubb, 71	12 31		1,852 56

Rec. pay't Feb'y 19, 1863.

JAMES A. COUVOISE, Tr.

No. 3—p. 21.—A.

Received, Sav'h, Feb'y 27, 1863, from G. B. Lamar, twenty-five thousand dollars, to pay for cotton jt. ac't.

$25,000. WM. W. CHEEVER.

No. 4—p. 21.—A.

Also received, in addition to above, twenty-five thousand dollars. Feb'y 27, 1863.

$25,000. WM. W. CHEEVER.

No. 5—p. 21.—A.

Also received eight thousand dollars in C. S. 8 per c. bonds and interest from Jan'y 1st, last.

$8,000 and int. WM. W. CHEEVER.

No. 6—p. 35.—A.

G. B. Lamar to Atlantic and Gulf R. R. Co.:

1863.				
June 6.	C. C. 12 B. cotton	6,020		$852 98
	C. C. 20 do	10,130		89 14
		16,150		
	(GC) 52 S I.	16,045	26,255	141 20
	(GC) 24 do.	8,515		74 93
	(GC) 6 do.	1,695		14 92
	1 J sugar	[070]		10 05
	114	42,405		383 22

Rec. pay't, July 10, 1863.

L. M. HAMILTON.

239 [143] No. 7—p. 36.—A.

1863. G. B. Lamar to Atlantic and Gulf R. R. Co.:

July 2. To freight [Z] 54 cases tobacco..... $219 07

C. A. L. Lamar:

June 6. J J M 61. S. S. 2 W B 14 [M B] 12 H M 3 J J B 3 P 11—G A B 8—114 bales cotton..... $484 22

[S.] 10 sacks salt.....

W M 8 " 0—..... 24 00

Deduct bill, bags, and rice missing..... 753 54

P'd 25 July..... ..... 276 00

477 54

L. M. HAMILTON.

No. 8—p. 65.—A.

1864. G. B. Lamar to C. R. R. Company:

Mar. 10. C B 5 W A M 10 [M] 6 [H] 4 G B 1 W A M 1 [M] 3 H 2 [E] 8 G. B. L. 3 43 bales cotton from Fort Valley (W J N)..... $412 80

91 S. I. cotton from Augusta..... 733 45

$1,136 25

Rec'd pay't March 28, 1864.

JAMES A. COUVOISE, *Tr.*

No. 9—p. 68.—A.

Rec'd Sav'h, Nov. 13, 1865, from G. B. Lamar, fifty-four dollars, for rent of Williamson's store, in full to date.

$54. JOHN WILLIAMSON.

No. 10—p. 6.—B.

1864. G. B. Lamar to C. R. R. Company:

July 15.	S I 57		
18.	S I 84		
6.	S I 54		
7.	S I 30	326 bales cotton p. bills.....	$4,834 76
8.	S I 53		
9.	S I 48		
240 [144]	1864.		
July 28.....			75
G. B. Lamar, jr., for meal, 75, sending Augusta, 82			1 58
			$4,837 09

JAMES A. COUVOISE, *Tr.*

GAZAWAY B. LAMAR *vs.* THE UNITED STATES. } No. 3222.

Receipts for claimant's cotton, proved by the deposition of William H. Bennett.

No. 11—p. 7.—A.

Rec'd, Aug. 20, 1862, from G. B. Lamar, twenty thousand dollars, to buy 100 bales cotton for McLeod, and then for jt. ac. with G. B. Lamar, C. A. L. Lamar, and myself, and ten thousand dollars to place with J. R. Harris & Co., Quincy, to buy tobacco for ac. of G. B. Lamar one-quarter, Wm. W. Cheever one-eighth, E. Padelford one-eighth, La Roach & Bell one-quarter, Isaac R. Harris & Co. one-eighth, and Cloghorn & Cunningham one-eighth.

WM. W. CHEEVER.

Laroche & Bell took only one-eighth.
J. R. Harris & Co. took none.
G. B. Lamar took those parts, making his one-half.

No. 12—p. 9.—A.

Received, Savannah, Nov. 10, 1862, of G. B. Lamar, esq., one hundred thousand dollars, to be used in payment for cotton and tobacco.

$100,000.00. WM. W. CHEEVER.

No. 13—p. 13.—A.

Savannah, Nov. 22d, 1862, rec'd from G. B. Lamar, esq., three hundred dollars, for one year's reduced rent of stores to 1st inst.

$300. J. STODDARD.

No. 14—p. 16.—A.

Savannah, 3 Jan'y, 1863, rec'd of G. B. Lamar, fifty thousand dollars ($50,000), for which I am to account to him.

$50,000. WM. W. CHEEVER.

241 [145] No. 15—p. 16.—A.

G. B. Lamar to Sa. and Gulf R. R. Co.:

1862.

Sept. 27.	G. B. Tiernan or G. B. Lamar,		15 bales cotton...	7,735	$37 13
Oct. 1.	Do.	do.	2 bales cotton....	1,050	6 30
14.	Do.	do.	4 bales cotton....	2,090	12 50
				10,875	55 93
Dec. 22.	S. Simkins,		22 bales rope.....	1,970...	$11 23
	Do.		1 bale bagging.....	740...	4 22
	J. J. Bradley,		10 coils rope.....	850...	4 84
	Do.		2 bales bagging	1,540...	8 78
Dec. 15.	S. Simkins,	4	do.	2,900...	16 53
					45 60
					$101 53

Rec'd pay't, January 13, 1863.

L. M. HAMILTON.

No. 16—p. 22.—A.

Rec'd, Savannah, March 7, 1863, from Mr. G. B. Lamar, four hundred dollars, on ac. of drayage.

$400. N. HAWKINS & CO.,
Per J. H. WILLIAMS.

No. 17—p. 23.—A.

G. B. Lamar to N. Hawkins & Co.:

1862.

Bill for Nov., 1862, as rec'd.....	$143 50
Dec. 1862, do.	62 25
Jan'y, 1863.....	269 65
Feb'y, 1863.....	288 70
	764 10
Paid on ac.....	400 00
	364 10

Rec'd pay't, 16 March, 1863.

N. HAWKINS & CO.,
Per J. H. WILLIAMS.

242 [146] No. 18—p. 37.—A.

G. B. Lamar to C. R. R. Company:

1863.				
June 24.	W 9 bales S. I. cotton, and exp'n's			$58 50
	M 92 bags guano	7,800	13 60	
	W 63 do.	8,060	14 10	
				27 70
June 25.	E. U. Lane, 30 bags guano	3,880	6 79	
	S. F. Lamar, 16 do.	2,080	3 64	
	G. W. Aaron, 1 do.		50	
				10 93
	In Bethea, 60 bbls. and 10 bbls			32 39
July 7.	Sacks for guano			1 12
	In Bethea, 138 bbls. guano			65 47
11.	[11] 9 sacks			5 39
13.	320 sacks rice (16 lbs. to A. Blue)			126 88
	1 sack flour			1 10
14.	533 sacks rice (26.63 do.)			211 69
				$541 77

Rec'd pay't, July 31, 1863.

JAMES A. COUVOISE, *Tr.*

No. 19—p. 2.—B.

G. B. Lamar to A. & G. R. R. Company:

1864.				
	3,470	46,645	61,299	
April 21.	JJD 7	JK 95	K 123	
	225 bales cotton from Thomasville, 111,414 lbs			2,116 87
30.	1 barrel lard from Turkman, 305			3 66
				$2,120 53

Rec'd pay't, May 7, 1864.

A. F. BENNETT, JR.

No. 20—p. 4. —B.

G. B. Lamar to T. A. Goodwin:

1864.				
Mar.	19. 26 loads guano to C. R. R. Co., 3.50			$91 00
Guano.	19. 18 bales cotton to press			18 00
	21. 7 loads guano to C. R. R.			24 50
	22. 5 do.			17 50
	23. 20 do.			70 00
	25. 9 do.			31 50
	28. 1 do.			3 50
	6 rice			6 00
				$262 00

243 [147]	April	2.	91 bls. cotton from C. R. R., S. I..			$91	
		13.	3 loads guano.....			15	
			4 do. corn to mill.....			16	
			7 do. do.			28	
			1 do. bags.....			4	
			1 do. rice to Gret's express.....			4	
J J O 7							
J K 95			1 do. rice to house			2	
R 123			225 B. C. from Gulf R. R. to press..			225	
							385 00
K 15	May	26.	21 do. ...			21	
JK 23			17 do. ...			17	
							38 00
							$685 00

Rec'd pay't June 18, 1864.

T. A. GOODWIN,
Per J. W. WILLIAMS.

No. 21—p. 5.—B.

1864. G. B. Lamar to A. & G. R. R. Co.:

May	21.	To freight—				
	21.	K	15 bales	7,330		
		J K	23 do.	11,250		
					18,580	$353 02
	28.	K	34 do.	23,885		453 82
		J K	23 do.	11,075		210 43
		L	32 do.	14,215		248 75
		K	5 do.	2,460		46 75
June	4.	L	160 do.	77,495		
						1,356 20
		K	19 do.	9,715		
		J K	10 do.	4,990		
						279 40
		L	58 do.	29,430		511 25
			379	191,845		$3,459 62

Rec'd pay't, June 20, 1864.

A. F. BENNETT, Jr.

No. 22—p. 5.—B.

1864. G. B. Lamar to A. & G. R. R. Co.:
June 16. To freight L, 4 bales cotton, 2,055 c. 3½..... $71 92

Rec'd pay't, 24 June, 1864.

A. T. BENNETT, Jr.

244 [148] No. 23—p. 8.—B.

1864. G. B. Lamar to A. & G. R. R. Co.:

May 30.	To freight—						
	G A C,	63 bales cotton..		31,073			$1,180 77
	B C,	38 } 86	do. ..	17,900			680 20
	B C,	48 }	do. ..	22,135			841 13
	G A C,	70	do. ..	35,335			1,342 73
June 17.	K,	34	do. ..	17,155			
	J K,	12	do. ..	5,965			
							878 55
	L,	41	do. ..	21,820			736 70
	K,	1 bale missing, not p'd.....		502			
23.	W C,	15 bales cotton..		5,855			222 50
30.	C C,	11	do. ..	5,700			
	W T,	25	do. ..	2,725	8,515		323 57
	A. M. Sloan, (5) bars iron.....			(385)			8 86
July 1.	G. A. C.,	34 bales cotton..		17,845			
	C C,	60	do. ..	32,120			
	W T,	5	do. ..	2,390			
	B. C.,	16	do. ..	7,700			
							2,282 09
	L,	234 } 329 B.	do. ..	116,119			4,412 52
2	L,	80 }	do. ..	39,637			1,506 20
5	L,	15 }	do. ..	7,420	63,176		281 96
7c.	G A C,	28	do. ..	13,890			
c.	B. C.,	5	do. ..	2,150	16,040		609 52
9c.	L,	1 lot loose.....		1,000			38 00
12c.	G A C,	18 bales cotton..		8,830			335 55
14c.	K,	1	do. ..	505			
c.	J. K.,	2	do. ..	994			
							57 00
c.	G A C,	11	do. ..	5,522			
c.	B. C.,	1	do. ..	430			
							226 18
16c.	G A C,	118	do. ..	59,270			
c.	B C,	9	do. ..	4,120			
							2,408 82
21c.	G A C,	17	do. ..	8,375			
c.	B C,	13	do. ..	6,140			551 57
Aug. 2.	L H,	(24) I. & E. Co..		(11,013)			$18,924 42
							385 45

245 [149] 1864.

c. G A C,	41 bales cotton	21,260		807 88
c. B C,	11 do.	5,205		197 79
	1,054 bales mine	527,087		$20,315 54
		4. 15. 11. 7		

Rec. pay't 13th Aug't, 1864.

WM. H. BENNETT.

No. 24—p. 9.—B.

G. B. Lamar to T. A. Goodwin:

1864.

June 8. To drayage, K 91, J K 45, L 295 { 431 from Gulf R. R. to the press. } 431 00

For State of Georgia, 540 from press to C. R. R., $540

Do. 40 bales from Lamar's to Hydraulic, 40 ..... 580 00

For steamers Lilian and Florie, S. L. 326 b. cotton from C. R. Road to press, c. $1.50 (steamers) ... 489 00

For State of Georgia, 15 b. sea island to Lamar's store 22 50

For cotton W. W. C. & C. A L L. G A C.. 226
C C.. 60
W I.. 5
B. C.. 44
L.. 314
K.. 1
J K.. 2–652
326 978 00

$2,500 00

Rec. pay't 16th Aug't, 1862.

T. A. GOODWIN,
Per J. H. WILLIAMS.

No. 25—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.

Aug. 2.	J O M, 24 bales cotton	11,835	$414 22
	I. & E. Co., J O M, 30 bales cotton...	15,920	557 20
		27,755	971 42

Rec'd pay't 18 Aug., 1864.

WM. H. BENNETT.

246 [150] No. 26—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.

Aug.	3.	1 roll bagging to Quickman, I. & E. Co			$2 19
	12.	L H.,	177 bales cotton,	82,371, I. & E. Co...	2,883 00
		J. W. Spain,	20 do.	8,654, I. & E. Co...	302 90
		J O M,	4 do.	2,015, I. & E. Co...	70 53
		D & P,	12 S. I.,	3,974, W. W. C. & C. A. L. L...	191 60
		L H,	1	535, I. & E. Co...	18 72

Rec'd pay't, August 26, 1864.

WM. H. BENNETT.

No. 27—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.

Aug. 27. To freight, L. H., 3 bales cotton, 1,200 lbs $42

Rec'd pay't, Sept. 8, 1864.

A. T. BENNETT, JR.

No. 28—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.

D M,	44	Bales cotton, 23,460 c.,	3.80	$891 48	
	161	255 do. 84,780	3.80	3,221 64	
	50	26,005	3.80	988 20	
					$5,101 32
D & P, 16 bales sea island, 5,273			4.80		25,310 10
17 Sept., 1864					$5,364 42

A. T. BENNETT, JR.

No. 30—p. 11.—B.

G. B. Lamar to T. A. Goodwin:

1864.

W W C,	Aug. 4,	G A C, 133 b. cotton,		
W W C,	4,	B C 86 219 do.	at $1.50.....	$328 50
Geo.,	5,	State Georgia, 15 b. cotton, C. & R. R. R.....		22 50
Jt. ac. C A L L,	5,	of Meimhard, 100 b. cotton		150 00
I. & E. Co.	10,	L H, 24 do.		36 00
W W C,	10,	G A C, 41		
W W C,	10,	B C, 11	do.	78 00

247 [151] 1864.

I. & E. Co.,	Aug. 10,	J. O. M,	24 b. cotton..	$36 00
Do.	16,	L. H.,	177 do....	265 50
Do.	16,	J. O. M.,	34 do....	51 00

Do.	16, J. W. Spain, J. W. S., 20	do....	30 00
W. W. C.,	20, D. & P., S. I., 12	do....	18 00
Paid.....			1,015 50

Savannah, Sept. 22, '64.

T. A. GOODWIN,
Per J. H. WILLIAMS.

No. 30—p. 12.—B.

G. B. Lamar to A. and G. R. R. Company:
1864. Sept., freight [D M] 1 bale cotton, $19.
Rec'd pay't, 23 Sept., 1864.

A. T. BENNETT, Jr.

No. 31—p. 12.—B.

G. A. B. Lamar to A. and G. R. R. Company:
1864. Sept. 20. To. G. A. C., 20 bales sea island cotton, 6,366, $305.59.
Rec'd pay't, 30 Sept., 1864.

A. T. BENNETT, Jr.

No. 32—p. 12.—B.

G. B. Lamar to N. A. Hardee:
To sending up by Alex. Hardee of—

L, 295 bales from M. J. McIntosh, No. 16.....		$295 00
L, 331 do. Groover.....		331 00
——626 do.		
L H, 24 J O M, 58 L H, 178 L H, 2 J W S, 20	282 bales for I & E. Co.....	282 00
D & P, 28 from Denham & Palmer's (mine).....		28 00
(D M) 256 from J. P. Coles, for Capt. Martin.....		256 00
Geo. A. Croom, 20 S. I.....		20 00
		1,212 00

Rec'd pay't, Oct. 13, 1864.

N. A. HARDEE & SON,
Per C. H. CAMPFIELD.

248 [152] No. 33—p. 14.—B.

1864. G. B. Lamar to T. A. Goodwin:

Sept. 5.	D & P 6 bales cotton, C. R. R., to store	W W C & C A L L	24 00	
	I R H 6 do. S. I.		9 00	
	J L K 22 do. S. I.		33 00	
	641——13			

D M 44	256	do. D. A. Martin	384 00
(D M) 161	128		
(D M) 50	—		
(D M) 1			450 00
G A C, S. I., 20, S. J. to Williams to W. C. & C. A. L. L.			480 00

Rec'd pay't, Oct. 27, 1864.

T. A. GOODWIN,
Per J. H. WILLIAMS.

No. 34—p. 14.—B.

1864. G. B. Lamar to A. & G. R. R. Company:

Oct. 18. (W) 13 bales cotton, 6,480		$291 60
20. (G) 19 do. 7,850		353 25
		644 85

Rec'd pay't, Oct. 29, 1864.

WM. H. BENNETT.

No. 35.—p. 15.—B.

Rec'd, Sav'h, Nov. 4, 1864, from G. B. Lamar, three hundred dollars, for rent of two stores to 1 Nov., inst. The rent to be six hundred for the year ending Nov. 1, 1865.

$300. J. STODDARD.

No. 36—p. 15.—B.

1864. G. B. Lamar to A. & G. R. R. Company:

Nov. 3. W T, 15 bales cotton, 6,035	$271 57
W. W. C. & C. A. L. L.	

Rec'd pay't, Nov. 10, 1864.

A. T. BENNETT, JR.

1864. G. B. Lamar to T. A. Goodwin:

Oct. 5. Loads guano to C. R. R. Co. (Sullivan)	$37 50
25. 6 loads, Kargler & Underwood	45 00
29. (W) 13 [G] 19 bales==32 bales cotton, D A M	48 00
	130 50

Rec. pay't, Nov. 17, 1864.

T. A. GOODWIN,
Per J. H. WILLIAMS.

249 [153] United States Court of Claims.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

EVIDENCE FOR CLAIMANT.

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250 [154, 155] U. S. Court of Claims. December term, 1871.

GAZAWAY B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

Now comes the said claimant, by C. F. Peck, the solicitor in said cause, and moves that the Hon. Secretary of the Treasury be requested to transmit to this court information as follows:

As to the net proceeds of two certain lots of cotton claimed by claimant, viz: 484 bales, seized at Thomasville, by A. G. Brown, jr., Treas. ag't, in Dec. 1865, and one lot of 426 bales, seized by S. G. Cabell, Treas. agent, at various points in Florida, from Oct. to Dec., 1865.

C. F. PECK,
Solicitor for Claimant.

(Endorsed:) No. 3222. U. S. Court of Claims. G. B. Lamar vs. The United States. Motion requesting copies of papers from the Treasury Department. Allowed 7th March, 1873. E. Peck, judge. Charles F. Peck, solicitor for claimant. Filed & issued M'ch 8, 1873. J. R.

UNITED STATES OF AMERICA:

3222.] TREASURY DEPARTMENT.

In pursuance of the act of Congress of 22d of February, 1849, relating to the certification of records under seal by the Secretary of the Treasury, and of the act of February 24, 1855, section 11, empowering the United States Court of Claims "to call upon any of the Departments for
251 [156] any information it may deem necessary," and whereas the last provision of the above-named section, to wit: That the head of no Department shall answer any call for information or papers, if, in his opinion, it would be injurious to the public interest, is in nowise violated by the transmission of the annexed information: Therefore, on this second day of May, in the year A. D. one thousand eight hundred and seventy-three, the Secretary of the Treasury of the United States, in answer to the rule of the above-named Court of Claims, dated March 8, 1873, submits the following as being the information now on file in his office touching the matters inquired of by said rule in the cause of G. B. Lamar vs. The United States, to wit:

I. That a lot of 484 bales of cotton seized at Thomasville, Ga., as the property of the Importing and Exporting Company of Ga., or G. B. Lamar, president, was forwarded to Savannah, of which cotton 13 bales were there sold; 113 bales were delivered to W. A. Beard, contractor, as pay in kind for collecting, repairing, and delivering said cotton at Savannah, and the remaining 358 bales were forwarded to New York with a large quantity of cotton from the same locality claimed by the same and other parties, and were sold by S. Draper, U. S. cotton agent, without distinction of marks or lots. Annexed, marked "A," is a statment of the proceeds of all of said cotton.

II. That S. G. Cabell shipped to New York, to S. Draper, U. S. agent, 272 bales of cotton reported by him to have been collected in Florida as the property "of the Importing and Exporting Company of Georgia; president, G. B. Lamar;" but has not accounted to the Government for

any other cotton or proceeds of cotton. Annexed, marked "B," is a statement of the proceeds of said 272 bales of cotton.

[SEAL.] WM. A. RICHARDSON,
Secretary of the Treasury.

252 [157] A.

Statement of the cotton received at Thomasville, Ga., and vicinity, by Sup'g Sp'l Agent Browne, and reported as claimed by the States of North Carolina, the Importing and Exporting Co. of Ga., G. B. Lamar, and others.

No. of bales collected.	No. of bales paid to contractor.	No. of bales sold at Savannah.	No. of bales sold at New York.	Gross proceeds.	Expenses at Savannah.	Freight to and expenses at New York to day of sale.	Total expenses.	Net proceeds.
2,152	499	.....	1,600	258,958 91				
		53	.....	8,717 80				
				267,676 71	9,933 00	18,390 82	28,324 42	239,352 29

B.

Statement of the proceeds of cotton collected by S. G. Cabell in Florida in 1865, and shipped to New York.

By what vessel.	No. of bales.	Gross proceeds.	Frt. to N. Y. and ch'g's on bl.	Exp's at N. Y. to day of sale.	Exp. repaid to Cabell.	Balance of i paid to Cabell.	Total expenses.	Net proceeds.
Lewis Clark	177	24,335 08	3,288 24	1,700 26				
Queen of the West...	95	12,218 38	1,749 61	1,023 16				
Totals	272	36,553 46	5,037 85	2,723 42	6,654 00	544 05	14,959 32	21,594 14

(Endorsed:) 3322. G. B. Lamar vs. The United States. Reply of Treasury Dep't. Filed May 2, 1873. J. R.

253 United States Court of Claims. December term, 1872.

G. B. LAMAR
vs.
THE UNITED STATES. } No. 3222.

Brief for claimant.

This is an action brought under the captured and abandoned property act to recover the proceeds of 4,185 bales of cotton, 3,275 of which were seized by the agents of the Government at Savannah, Georgia, 522 bales at Thomasville, Georgia, and 426 bales at Tallahassee, Florida.

This claimant is to be congratulated that, after nearly ten years of oppression, persecution, and slander, he at last stands in a court of justice, before judges who will try his cause upon the law and the evidence.

It was Mr. Lamar's misfortune, at the close of the rebellion, to have been the owner of over four thousand bales of cotton. At that time our Government turned loose upon the people of the South a horde of miscreants known at first as Treasury agents, but soon afterwards as cotton thieves, who proceeded to mark every man in the South who owned a bale of cotton as their prey. It is unnecessary in this court to discuss their merits, for the representative of the Attorney-General has gravely argued before you that their general character was such that the legal presumption of a public officer duly accounting for Government property coming into his possession could by no possibility apply to them, and that the opposite presumption was much more reasonable.

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The possession of some four thousand bales of cotton has subjected Mr. Lamar to a course of wrong and injustice such as few men have ever experienced. To facilitate the designs of his plunderers he has been arrested over and over again, and stripped of every document, memoranda, or evidence of title to his property that could be found. He has been tried by court-martial for crimes unknown to any law, human or divine, and was of course convicted. He has been in his old age deprived of the accumulations of a life-time, and reduced from wealth to indigence.

During the war the President of the United States, in the exercise of an undoubted prerogative, proposed to Mr. Lamar that he should return to his allegiance and take the amnesty oath, promising him in return therefor protection to all his property and restoration to all his rights.

Mr. Lamar believed the promise and accepted the plighted faith of the Government. He was one of the first citizens of Savannah who took the amnesty oath, subscribing to it on the 6th of January, 1865.

The first act of the Government after this was to exclude him from his warehouses and other property; then followed the seizure of over 3,000 bales of his cotton stored in Savannah, then arrest and imprisonment, further seizures of papers, more seizures of cotton stored in other places, until he was completely stripped, not only of all his property, but of the evidences of his title to it.

It is a matter of congratulation to this court that, representing the judicial authority of the Government, it will have the power to remedy, in some degree, the wrongs which have been done the claimant.

OWNERSHIP AND SEIZURE.

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The proof as to the ownership of this large amount of cotton is found in various parts of a bulky record, and in order to render the court all necessary assistance we will divide the cotton into four lots.

Mr. Lamar purchased a few hundred bales in the city of Savannah, which were stored in various places, where it remained until seized by the United States forces. These will constitute the first lot.

There are several specific lots of cotton which were bought for Mr. Lamar outside of the city of Savannah by other agents than Mr. Cheever, who was his principal agent, and sent to that city. These will constitute the second lot.

Mr. Lamar employed one W. W. Cheever to purchase a very large amount of cotton for him outside of the city of Savannah, and under this employment purchases were made to the amount of 5,768 bales. Of these 2,500

were sold by Mr. Lamar to the Importing and Exporting Company, leaving 3,268 the property of claimant. The railroad receipts will show that a large portion of these purchases were received in Savannah, and these will constitute the third lot.

The balance of the cotton purchased by Mr. Cheever and not sent to Savannah were seized at Thomasville, Georgia, and at Tallahassee, Florida. These will constitute the fourth lot.

I. COTTONS PURCHASED IN SAVANNAH AND REMAINING THERE UNTIL SEIZED.

a. 32 bales.—Franc S. Perry (on p. 4) swears that he was the agent for the Southern Express Company; that claimant pointed out to him 32 bales, S. I., marked with his name or initials, on the premises next door to his office, and endeavored to procure storage for this cotton under the express office, but the next day the United States officers seized it.

b. 136 bales bought from Gué.—John Sullivan (p. 12) swears that
256 this lot was purchased from Mr. Frank Gué, marked "H. S.," and was stored in the claimant's warehouses, as the property of claimant. It remained in the warehouse until it was seized.

c. 212 bales bought from Meinhard.—Henry Meinhard testifies (p. 3) that he sold C. A. L. Lamar, for claimant, two lots, amounting to 200 bales. On p. 25 the same witness testifies that one of the lots was over 100 bales; does not remember how many over; that it was hauled from his warehouse by the superintendent of Goodwin's dray, Mr. Edward Breen.

Mr. Edward Breen testifies (pp. 17 and 18) that he hauled one hundred bales from Meinhard & Bros. to certain stores on Moore's wharf, owned by claimant, or to the adjoining store, rented by claimant from Mr. Stoddard; also that he hauled a lot of 112 bales, bought by claimant in Savannah, to the same place.

Through carelessness in his examination, he does not identify this last as bought from Meinhard, but it would be evidence of ownership of such a lot by claimant from some source, and the evidence shows no other lots purchased by claimant in Savannah large enough to answer to this, except one of 136 bales, from Gué, just referred to, which was too large, and which was stored in another place, viz., in the claimant's warehouse.

The receipts on pages 144 and 152 show that claimant was lessee of Stoddard's store. (See also pp. 37, 38, 39, and 40.)

Joseph Ehlen testifies (p. 37) that he was employed by Colonel Ransom to make seizures of cotton on behalf of the United States. And (at p. 38) that he took from Stoddard's building one lot of 112 bales of upland cotton, and two crates of loose cotton, and subsequently from the same building 488 bales of upland, 86 bales of sea island, and 19 crates of loose cotton; and also that he took from the adjoining stores of claimant 111 bales of upland and five bales of sea island cotton. That all of
257 this was claimed as the property of G. B. Lamar, except the first lot of 112 bales, and he does not know who the claimant for that was, but heard that it was Mr. Lamar's.

As a total of these purchases in Savannah we have the three lots.

a.	Proved by Perry	32 bales.
b.	Bought from Gué	136 bales.
c.	Bought from Meinhard	212 bales.
	Total	380 bales

II. SPECIFIC LOTS OF COTTON BOUGHT OUTSIDE OF SAVANNAH BY OTHER AGENTS THAN CHEEVER.

d. 295 bales (purchased by E. Remington & Son).—On pp. 47, 48, 49, 50, 51, 52, being exhibits A, B, C, D, E, and F to the deposition of A. Lawson on the invoices of purchases made for the claimant by E. Remington & Sons, at Thomasville, Georgia, as follows:

Exhibit A, p. 47	47	bales.
" B, p. 48	17	"
" C, p. 48	29	"
" D, p. 49	60	"
" E, p. 50, 109 less 60	49	"
" F, p. 51, 90 less 23	67	"
Total	296	"

We deduct 60 bales from Exhibit E, and 23 bales from Exhibit F, because that number was seized by a Confederate quartermaster for the use of the army. There is no proof of the fact, but Mr. Lamar wishes to make this disclaimer.

e. 361 bales (purchased by Young, Woods & Gardner).—On page 53 is the invoice for 361 bales purchased for claimant by Young, Woods & Gardner, at Eufala, Ala.

258 *f.* 41 bales (purchased by W. J. Anderson).—On pp. 57, 75, and 76 will be found an invoice of 129 bales of cotton, purchased by W. J. Anderson, 80 of which were resold to Mr. Battersby, and 8 to Blum and Meyer; leaving 41 bales, 35 bales being at Fort Valley and 6 at Macon.

A recapitulation of these purchases made outside of Savannah, by other agents than Cheever, show—

d.	Purchased by E. Remington & Son	296	bales.
e.	" " Young, Woods & Gardner	361	"
f.	" " W. J. Anderson	41	"
	Total	698	bales.

III. COTTON PURCHASED FOR CLAIMANT BY MR. W. W. CHEEVER, OUTSIDE OF THE CITY OF SAVANNAH.

g. 3,268 bales (purchased by Mr. Cheever).—On pp. 142 and 144 are receipts given by Mr. Cheever for moneys which he received from claim-

ant, these moneys being received in pursuance of an employment to purchase cotton for claimant, which is explained in the deposition of Mr. Lawson. He says (p. 41): "I know that Mr. Lamar employed Mr. Cheever to go to Florida and purchase cotton, and that Mr. Lamar supplied him with money for that purpose. Mr. Cheever furnished invoices for the cotton so purchased, and for which his account got regular credit." "Mr. Lamar furnished all the money, and Mr. Cheever, for his services in purchasing the cotton, was to receive one-third the profits, if any."

On pp. 81 and 82 the same witness testifies that when Mr. Cheever entered upon this employment he was largely indebted to claimant, and that when he died in 1863 he was also indebted to him. This witness also testifies that Mr. C. A. L. Lamar, the son of the claimant, whose
259 name appears frequently in these transactions, had only an interest in the profits.

Mr. Lawson was the book-keeper for the claimant and also for C. A. L. Lamar. He testifies that Mr. Cheever purchased under this arrangement 5,768 bales of cotton; that subsequently 2,500 bales were sold by claimant to the Importing and Exporting Company, thus leaving 3,268 bales as the property of claimant. (Pp. 43, 81.) We therefore have under this head 3,268 bales. A statement of all the cotton shown to have been purchased by Mr. Lamar to this point would be as follows:

I.

a.	Bought in Savannah, proved by Perry.....	32 bales
b.	" " from Gué.....	136 "
c.	" " " Meinhard.....	212 "

II.

d.	Bought in Thomasville, Ala., by E. Remington & Son...	296 bales.
e.	Bought in Eufala, Ala., by Young, Woods & Gardner...	361 "
f.	Bought in Fort Valley and Macon, by W. J. Anderson..	41 "

III.

g.	Bought in various places, by W. W. Cheever.....	3,268 "
		4,346 "

We shall now examine the proof to see how much of this cotton purchased in the interior is shown to have reached Savannah.

The first three lots, *a*, *b*, and *c*, amounting to 380, are originally located in Savannah, by the testimony before referred to. These deducted from the total of 4,346 bales leaves 3,966 bales located various places outside of Savannah. It is not claimed that all of this cotton came to
260 Savannah, but we produce railroad receipts showing that 3,929 bales were shipped to Savannah to the claimant, as follows:

Receipt No.	1.	(Page 141)	A. & G. R. R.	.....	579	bales.
"	6.	" 142	"	.....	114	"
"	7.	" 143	"	.....	114	"
"	15.	" 146	"	.....	21	"
"	19.	" 146	"	.....	225	"
"	21.	" 147	"	.....	379	"
"	22.	" 147	"	.....	4	"
"	23.	" 148	"	.....	1,054	"
"	25.	" 149	"	.....	54	"
"	26.	" 150	"	.....	214	"
"	27.	" 150	"	.....	3	"
"	28.	" 150	"	.....	271	"
"	30.	" 151	"	.....	1	"
"	31.	" 151	"	.....	20	"
"	34.	" 152	"	.....	32	"
"	36.	" 152	"	.....	15	"
					3,100	"

Receipt No.	2, p. 141,	Central R. R.	.....	360	bales.
"	8, p. 143,	" "	.....	134	"
"	9, p. 143,	" "	.....	326	"
"	18, p. 146,	" "	.....	9	"
				829	bales.
Total			.....	3,929	"

From this total certain deductions should be made.

Receipt No. 25, p. 149, shows 30 bales belonging to I. & E. Co., and receipt No. 26, on page 150, shows that 202 bales belonged to that company—total, 252 bales. Deduct these from total shipments, and we have 3,677 bales of cotton belonging to claimant shipped to Savannah. To this should be added 380 bales purchased in Savannah, and we have:

Cottons purchased in Savannah	.....	380 bales.
" forwarded to Savannah from interior	.....	3,677 "
Total in Savannah	.....	4,057 "

261 Mr. Lamar only claims 3,275 bales stored in Savannah; this discrepancy in his favor of 782 bales he can explain, and would be glad of an opportunity to do so.

The Government has seized all or nearly all of his receipts, invoices, books of account, &c. Many of them have been lost or destroyed, and when copies of those existing have been called for, they have been furnished in such an incomplete and mutilated form as to be of but little assistance. Whatever of these remain are in possession of the Treasury Department, so that the Government has every opportunity and all the material with which to refute this proof, if they can.

In concluding this part of the case, we will call your attention to several parts of the record strongly corroborating the details before given.

Mr. John Sullivan testifies that he was in charge of the warehouses of

claimant, and that a very large amount of cotton belonging to him was stored there, and that he turned over all the cotton there to an employee of Colonel Ransom, pointing out to him Mr. Lamar's cotton and giving him the marks.

Mr. B. H. Hardee testifies (p. 4), entirely corroborating Mr. Sullivan, and stating that he seized, and there were shipped from this warehouse as the property of Mr. Lamar, 3,037 bales.

This witness further states that he satisfied himself as to the ownership from the fact that the different lots were stored separately, and by statements received from the parties having cotton in the warehouse. And it plainly appears that there was no clashing of interest, as there must have been if Mr. Lamar had claimed the cotton of others.

Mr. Ehlen (p. 39) proves that, acting for the United States, he took from Williamson's building and the buildings between Drayton street and Exchange dock, occupied by the claimant, 711 bales and 19 crates,
262 say 720 bales, all of which was taken as Mr. Lamar's except one lot of 112 bales, about which the witness knew nothing. This, added to the 3,037 bales removed from the warehouse of claimant and identified as his, would make 3,757 taken as the property of claimant.

Mr. Hamilton (p. 19), who had charge of Colonel Ransom's books, shows that 3,553 bales were returned as shipped in the name of G. B. Lamar, which statement is exactly corroborated by the transcript from Book E, Quartermaster-General's Office, p. 24.

We therefore close our statement as to the Savannah cottons by recapitulating the proof as follows:

We show that claimant purchased and had in his possession in the city of Savannah 380 bales; that he sent into the interior and purchased by other agents than Cheever 698 bales; by Cheever, 3,268 bales; total, 3,966 bales; that he received over the railroad consigned to himself, with every indicia of ownership, and on which he paid the freight, 3,929 bales; that he had stored in his warehouse and in buildings rented by him for several months, and, in some instances, for several years, 3,757 bales; that the United States authorities seized from his possession as his property, and so recorded on the books of the seizing officer, 3,553 bales; that this cotton was not only in his possession, but was originally paid for by him and stored as his own, and openly claimed as his private property, and taken possession of as such by the United States; that his private books and papers, which would expose any attempt at concealment or misrepresentation, have been for many years and are now in possession of the defendant.

The amount of Savannah cotton claimed is 3,275 bales. The transcript from Book E (p. 24) shows that 91 bales of sea island were shipped to New York. This would leave 3,184 of upland. At $231.79 and $175.33 per bale, respectively, this amounts to $579,343.61.

263 *IV. h.* THE LOT OF 426 BALES SEIZED AT TALLAHASSEE, FLORIDA.

The ownership and seizure of this lot is clearly shown in the evidence of John P. Coles, on pp. 65 and 66. He is corroborated by the testimony of F. R. Cotten (p. 66), George Whitfield (p. 67), George A. Croom (p. 68), S. Semkins (p. 69), B. W. Bellamy (p. 71).

The returns from the Treasury Department as to the net proceeds of this cotton are so confused that we have called for more definite information, and when this is received a statement of it will be presented.

J. W. DENVER,
C. F. PECK,
Attorneys for Claimant.

264 GAZAWAY B. LAMAR *vs.* THE UNITED STATES. } No. 3222.

Additional brief by claimant.—Filed April 22, 1873.

The petitioner claims for several parcels of cotton taken by the United States military officers from his possession in the city of Savannah, in the months of January, February, and March, 1865, in violation of his rights of property, after he had taken the amnesty oath under the proclamation of President Lincoln of the 8th December, 1863.

By the testimony of B. H. Hardee, pp. 5, 6, 7, and A. H. Waver, pp. 8, 9, of M. Hamilton, pp. 19, 20, 21, and of the Quartermaster-General, pp. 23, 24, 25, it is proven that 3,553 bales of cotton were taken from his possession from the warehouses known as Lamar's press warehouses, on the eastern wharves of the city. In specifying particular parcels reference to those only will be mentioned.

By the testimony of Joseph Ehlen, p. 39, he declares that he took—

From Williamson's building (rented by claimant, p. 143), 127 bales uplands	127	bales.
From John Stoddard's store (rented by claimant, p. 27),		
265 112 bales and 2 crates of loose cotton	112	"
From John Stoddard's store (rented by claimant, p. 27),		
488 bales uplands, 86 sea islands, and 69 crates	574	"
From claimant's own store, next the Exchange dock, and adjoining Stoddard's	115	"
Counting 3 crates to 2 bales, 21 crates make	14	"
Taken by Joseph Ehlen	943	"

In specifying particular parcels reference to the above only will be mentioned, the evidence in regard to the 3,553 bales, as well as to the 943 bales, being considered perfect.

Particular parcels and the property in them will now be designated, viz:

No. 1: 32 bales sea islands, taken from the corner of Bay lane and Drayton street (see Francis Perry, pp. 4, 5), a distinct and separate parcel from the 3,553 and the 943. Mr. Perry is very explicit and conclusive, and his testimony was taken prior to the report of the Quartermaster-General, say 27' February, 1869; the latter 25' October, 1871; and the Quartermaster-General reports 25 square bales only in the lot, and all as marked "G. B. Lamar;" and Mr. Perry states that a part of it was marked "G. B. L." The facts are, there were only 24 square bales and 8 round; the former were shipped under the mark A. B., No. 1747 a 6770, and 7

266 round bales were remarked No. 1771 a 1777; and 1 was broken and repacked.

No. 2: 50 bales upland, taken from the Central Railroad depot, per Quartermaster-General's report, marked "Lamar," January 27, 1865.

No. 3: 86 bales uplands, bought by C. A. Lamar from Alderman Gu (see John Sullivan, p. 12, both as to the purchase of the cotton and the loss of all the books and papers of the warehouse, and including bills of purchase). These and the 50 bales No. 2 constitute the 136 purchased from F. L. Gué, and the 86 were part of 3,553 bales.

No. 4: 60 bales J. C. 3, T. B. or G. B. L. 13, W. Howard 7, K. Bracewell 37=60 bales, bought for claimant by E. Remington and Son (see A. S. Lawson's exhibit, p. 49), and constituted a part of the 3,553 bales.

No. 5: 212 bales uplands, S. M. 94, J. Mc. M. 6, various 112=212 bales bought from Meinhard and brothers (see H. Meinhard's testimony, pp. 3, 4, 25, and 26), and hauled by Edward Breen (pp. 18, 19) to Lamar and Stoddard's stores, and constituted part of the 943 bales taken by Ehlen.

No. 6: 402 bales uplands, J. J. W., 402 bales bought by W. W. Cheever, being part of 552 bales bought at different times from I. J. Williams (see cotton-book, pp. 2 and 54), for joint account between him and the
267 claimant, was designated with the sixth parcel; No. 7, 44 bales, as the Lamar and Cheever cotton by John Sullivan (p. 12), and constituted part of the 3,553 bales, 402 upland.

No. 7: 44 bales uplands, W. T., 44 bales bought of W. N. Taylor by W. W. Cheever (see cotton-book, p. 2), and was part of the Lamar and Cheever cotton (see John Sullivan, p. 12), and was part of the 3,553 bales, 44 upland.

No. 8: 82 bales S. I. [G. C.], 82. S. I. bought by W. W. Cheever from Geo. A. Croom (see cotton-book, p. 26), on joint account with W. W. Cheever, C. A. L. Lamar, and claimant, and was part of the 3,553 bales; 31 were shipped by schooner Nautilus, and 60 per Helen (see B. H. Hardee, p. 7), 82 sea island.

No. 9: 9 bales S. I., W., 9 bales sea islands bought by W. W. Cheever as No. 8 (see cotton-book, p. 28), and were shipped as the same (B. H. Hardee, p. 7), 9 sea island.

No. 10: 28 bales S. I., D. & P., 28 sea islands from Denham and Palmer (see W. H. Bennett, No. 26, p. 150, for 12 bales, and same page, No. 28, for 16 bales, A. T. Bennett), 28 sea island.

No. 11: 22 bales S. I., J. L. K., 22 sea islands (see cotton-book, p. 27; Edward Breen, p. 16; T. A. Goodwin, hauling, p. 150), 22 sea island.

No. 12: 20 bales S. I., C. A. C., 20 sea islands (see A. T. Ben-
268 nett, p. 151; No. 31, forwarded by Alex. Hardee, p. 151; No. 32, hauled to Williamson building per T. A. Goodwin, p. 152), part of 943 taken by Jos. Ehlen, 20 sea island.

No. 13: 6 bales S. I., J R H (6 sea island), bought of J. R. Harris and Co. by W. W. Cheever; hauled by T. A. Goodwin (p. 152), No. 33, part of 943 bales, 6 sea island.

No. 14: 35 bales uplands, G B L 6, [M] 9, W A M 11, [H] 4, H 2, [F] 8, G B L 3=43 bales bought by W. J. Anderson and Co., freighted per C. R. R. Co. (p. 143, No. 8; invoice of 129 bales, p. 76), of which the 43 were part, and out of the 43 8 bales were sold to Blum and Meyer (p. 77), 35 uplands.

No. 15: 8 bales uplands, W R 1, 470, A H 1, 562, W S 3, 734, W F G 5, 2,784 lbs., were remnants of lots, and part of the 3,553 bales, 8 uplands.

No. 16: 31 bales uplands [G], bought by W. W. Cheever, per cotton-book, p. 7, part of the 3,553 bales, 31 upland.

No. 17: 34 bales uplands, A H, bought by W. W. Cheever, (cotton-book, p. 2), and were part of 3,553 bales, 34 uplands.

No. 18: 422 uplands (J K 165, K 235, J J D 7, W G 15), bought by W. W. Cheever, per cotton-book, pp. 12 and 13, of J. Kirkley,
269 freighted per A. and G. R. R. (see Wm. H. Bennett, pp. 14 and 15), 422 uplands.

No. 19: 622 bales uplands, L, bought by W. W. Cheever, under various marks, remarked and put up by Alander Hardee (pp. 33 and 34), freighted per A. and G. R. road (see W. H. Bennett, pp. 15 and 16), 622 uplands.

No. 20: 141 bales uplands, B C, bought by W. W. Cheever of Benjamin Chaires, cotton-book, p. 9, being part of 227 bales, freighted to W. H. Bennett (pp. 15 and 16), 141 uplands.

No. 21: 71 bales uplands, C C, being part of 172 bales bought by W. W. Cheever of C. P. Chaires, cotton-book, p. 21, per A. and G. R. R. (W. H. Bennett, pp. 15 and 16, and including Nos. 18 to 21), were of the 3,553 bales, 71 uplands.

No. 22: 25 bales uplands, W T, bought by W. W. Cheever, and stored with Evans and Parnell (see R. R. Evans' cotton-book, p. 66), freighted by A. and G. R. R. (page 148, No. 23), 25 uplands.

No. 23: 400 bales uplands, G A C, bought by W. W. Cheever of Green A. Chaires (cotton-book, p. 7, per A. and G. R. R., see W. H. Bennett, pp. 14, 15, 16), being part 506 bales, and constituting part of the 3,553 bales, 400 uplands.

No. 24: 32 bales uplands, (W) 13, (G) 19, 32, freighted by the A. and G. R. R. (see W. H. Bennett, p. 152, No. 34), and were part of the 943 bales, 32 uplands.

270 No. 25: 256 bales uplands (D M) bought by W. W. Cheever for D. A. Martin (see A. S. Lawson, p. 43), freighted per A. and G. R. R. (see W. H. Bennett, p. 150), forwarded by A. Hardee (p. 151), hauled by Goodwin (p. 152)—Martin is indebted for advance—on these 256 uplands.

No. 26: 136 bales uplands (E T A or E T Y 69, X Y Z 67), received and advanced upon by C. A. L. Lamar for a person in Virginia, and were rebagged and compressed for the owner. The owner made inquiry for them since the war, but when informed of their being taken by the United States declined to pay the advances made upon them; 136 uplands—3,266 bales, of which 199 are sea islands.

3,138 bales.

136 No. 26: This parcel of 136 bales were received and the freight paid by Charles A. L. Lamar, who advanced money upon them. They were taken from the press warehouses and from my possession, and constituted a part of the 3,553 bales.

426 No. 27: For 426 bales taken in Florida by S. G. Cabell from several plantations, per testimony of J. P. Coles, p. 65; of F. R. Cotton, p. 66; of George Whitfield, p. 67;

of George A. Croom, p. 68; of Smith Simkins, p. 69, and of Colonel B. W. Bellamy, p. 71, all of which is positive and conclusive.

271 522 No. 28: For 522 bales taken by A. G. Browne, at Thomasville, in December, 1865; he reports 484 bales, but including 38 bales of no mark in the same report as the property of the Importing and Exporting Company, which were my property, and which make 8,522, and also 8 bales, marked "B W B," bought of B. W. Bellamy.

4, 222
199 of which were sea island.

4, 023 bales upland.
199 bales sea island.

4, 222

RECAPITULATION OF COTTON.

Taken from the press warehouses in Savannah by M. Hamilton (testimony, pp. 18 and 19), and acknowledged by the Quartermaster-General (p. 30)		3, 553 bales.
Taken from corner of Bay lane and Drayton street (F. S. Perry, pp. 4, 5), and partly acknowledged by the Quartermaster-General (p. 31), sea island		32 "
Taken from Central Railroad depot, acknowledged by the Quartermaster-General (pp. 31, 32)		50 "
Taken from Williamson's store (per Joseph Ehlen, p. 39), 92 upland and 35 sea island		127 "
272 Taken from Stoddard's store (per J. Ehlen, p. 39) ... (and 2 crates.)		112 bales,
Taken from do. rented by claimant (per Jos. Ehlen, p. 39), 488 upland and 86 sea island and 19 crates		574 bales.
Taken from Lamar's own store, next to Exchange dock (per J. Ehlen, p. 39), 111 upland, 5 sea island		116 "
21 crates (three crates to two bales)		14 "
		4, 578 "
G. B. Lamar claims, as taken from him "in Savannah," per bill	3, 274 bales.	
Henry Lafone claims for his lien on importing and exporting cotton taken in Savannah	688 "	
		3, 962 "
Not claimed by G. B. Lamar, but taken from his possession..		616 "

Respectfully submitted.

G. B. LAMAR, *Claimant.*

273 In the Court of Claims.

GAZAWAY B. LAMAR
versus
THE UNITED STATES. } No. 3222.

I certify that the foregoing printed and manuscript pages, upon which I have written my name, contain a true copy of the printed record in the aforesaid cause, as the same appeared to the Chief Justice and judges of the Court of Claims when the said cause came on to trial on the 20th day of May, 1873.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 25th day of May, A. D. 1882.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

I, Charles D. Drake, Chief Justice of the Court of Claims, certify that the foregoing attestation of John Randolph, assistant clerk of said court, is in due form.

C. D. DRAKE.

274 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the thirtieth day of January, in the year of our Lord, one thousand eight hundred and eighty-two.

Present, the honorable Hoyt H. Wheeler, judge.

CHARLES F. McCAY
vs.
G. DE ROSSET LAMAR, EXECUTOR, ETC.

The above cause coming on for final hearing upon pleadings and proofs—

Mr. J. B. Stewart is heard in behalf of complainant.

Mr. Edward N. Dickerson is heard in behalf of defendant.

Further argument adj'n'd to 31st inst.

275 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the thirty-first day of January, in the year of our Lord one thousand eight hundred and eighty-two.

Present, the honorable Hoyt H. Wheeler, judge.

CHARLES F. McCAY
vs.
G. DE ROSSET LAMAR, EXECUTOR, ETC.

The argument in the above cause being resumed, pursuant to adjournment—

Mr. Dickerson concludes his argument in behalf of defendant.

Mr. Stewart closes in behalf of complainant.

C. A. V.

276 U. S. circuit court, southern district of New York.

CHARLES F. McCAY
vs.
G. DE ROSSET LAMAR.

The defendant is the executor of the will of Gazaway B. Lamar, who owned, was interested in and connected with large amounts of cotton which were seized in the Southern States by United States Treasury agents at about the close of the war of the rebellion, and sold, and the proceeds of which were turned into the Treasury of the United States. He brought proceedings in the Court of Claims for the recovery of these avails, and therein recovered, in April, 1874, the sum of $579,343.51. The orator claims that $23,844.88 of this sum was recovered for 136 bales which, subject to some claim for advances in which Lamar was interested,
277 belonged to the Richmond Importing and Exporting Company, a corporation of Virginia, and that the right of that company to this cotton and its proceeds has been assigned to him. This bill is brought for the recovery of these avails, and the cause has been heard upon bill, answer, replication, proofs, and argument of counsel.

Three principal questions have been made in respect to the orator's right of recovery. One is as to whether these 136 bales were embraced in Lamar's recovery. Upon this question careful examination of the proofs lead to the conclusion that they were. The proof of the proceedings in the Court of Claims would alone leave the matter somewhat in doubt; perhaps too much so for a foundation for a recovery; but while the case was pending he made his will, that of which the defendant is executor, containing these clauses: "It is my further will and desire,
278 and I hereby direct my executors, to press my claims upon the Government of the United States for the payment of the following cotton, which are now before the Court of Claims." Among other lots the following was specified: "136 bales cotton belonging to a gentleman in Richmond, Virginia, on which C. A. Lamar made advances." "When all the collections for this private cotton are made, and the amount placed to the credit of the several accounts, and interest charged to each account for my advances, then a division must be made of the net balance to the private account of each." After the recovery, he advertises in the Richmond Enquirer for the owner of two parcels of cotton, and this lot was in two parcels, stating: "I have to-day received payment for the same from the United States Treasury," and requesting the owner "to come
279 forward, pay advances and expenses, prove ownership, and receive the balance due." The proofs also show that he entered this cotton in his books as belonging to an owner unknown, but advertised for in Richmond, charged it there to the United States at $23,844.88, and credited to the United States that sum as received for it. This clearly shows that his claim embraced this cotton; that he understood that he recovered for it; and altogether the proof is quite satisfactory that he did recover for it. The proof, including correspondence, shows quite clearly that this cotton was purchased and forwarded to C. A. Lamar by a Mr. Hambleton, of Richmond, as agent for the Richmond Importing and Exporting Company, and was owned by that company.

Another question is as to whether that company could have recovered for this cotton or its avails, for it is said, if that company could
280 not its assignee could not. It is argued that it could not, because it was chartered and organized to run the blockade and aid the rebellion. The proof shows that it was chartered "for the purpose of owning, navigating, and freighting ships and other vessels engaged in freight and domestic commerce, and of buying and selling the products and commodities so freighted or intended to be freighted," and that it was engaged in running the blockade, and in that way indirectly, if not directly, to some extent aiding the rebellion. But the proof does not show that C. A. Lamar or Gazaway B. Lamar received this cotton under any arrangement that it should be used in aid of the rebellion, or in any unlawful manner, such that it could not be recovered for in the hands of either; and the fact that it was recovered for by the latter shows that nothing that he was doing with it forfeited or outlawed it. The corporation
281 appears to have been lawful enough in itself. The business it was chartered for might be lawful or unlawful. In transacting unlawful business it would incur the consequences of its unlawful acts the same as a person, but such unlawful acts would not of themselves forfeit its property not involved in them, nor its other lawful rights. As the case is presented, no good reason is shown why this company might not, in its own name, have recovered these avails of the defendant's testator in his life time, or of his executor since his decease. The other principal question is whether the claim is so assigned to the orator that he can recover upon it in his own name. It is not questioned but that an assignee of a mere right of action or recovery may maintain a suit in equity upon it in his own name; but it is strenuously argued that no real and valid assignment of this claim is shown. That company had a valid claim
282 against Mr. Lamar, the testator. He held these avails of the property of the company in trust for the company. The company had a right to charge him as its trustee of the funds, whether he was willing or not; he seems to have been willing, however, and to have charged himself so far as he could. The disposition of the cotton was directly within the corporate powers of the company; and the disposition of the avails of the cotton was impliedly within the same scope. The charter provided that "the affairs of the company shall be managed by a president and board of directors, whose term of office, and their number, shall be determined and elected by the stockholders, and the said board of directors shall possess all the corporate powers of the company." The proof shows that no meeting of the company had been held, for any purpose, for many years, and that very little or no corporate business had been transacted
283 within a number of years before the assignment. It does not show what term of office was determined upon for the directors. It does show by the testimony of the officers who the directors were at the time, which was competent for that purpose, especially as the proof also shows that the records were destroyed. One of them died. The president and all the others joined in the execution of the assignment. This seems to be sufficient to transfer the title to the claim to the orator.

The bill alleges that Gazaway B. Lamar received this cotton as executor of C. A. Lamar, and held it as such when it was seized. The answer de-

nies that he was the executor of C. A. Lamar, or held it as such. The proof does not support the bill, but sustains the answer on this point. He appears to have received it as surviving partner. This failure to sustain the bill in this respect is argued to be fatal to the right to recover
284 upon the bill. This argument is not considered to be well founded. The orator does not seek to recover through C. A. Lamar, nor upon any right of his, nor upon any obligation incurred by him. How this cotton came into the hands of Gazaway B. Lamar is wholly immaterial in this case. The statement of it is mere inducement. The material facts are that the cotton belonged to the Richmond Importing and Exporting Company, and that the testator received the avails of it, and that the orator has succeeded to the right of the company to the avails. The bid ought not to fail when the material allegations are proved. The orator appears to be entitled to a decree for the payment of these avails. The avails are the amount received for this cotton after deducting the expenses belonging to it and the recovery for it. It is stipulated that the expense of recovering the whole sum was $100,000. The expense of re-
285 covering this part may be in proportion and may not; it is not stipulated what it would be. That fact is to be ascertained. The orator claims interest on the avails, and it is included in the prayer of the bill. On the facts stated the orator is not entitled to interest as such. The testator was not a borrower of the money, nor was he wrongfully withholding it. Still, if these avails were so invested as to bear interest, the orator would be entitled to the interest they bore as a part of the avails. An account, therefore, is necessary of the expenses and charges belonging to this cotton and to the recovery of the sum received for it, and of the interest received, if any.

Let there be a decree that an account be taken of the charges and expenses chargeable to this cotton and to the recovery of what was received for it, and of the interest received upon the avails of it, if any, and for the payment of the balance to the orator out of any assets of the estate
286 in the hands of the defendant, with costs.

(Endorsed:) Circuit court of the U. S., southern dist. of N. Y. Charles F. McCay vs. G. De Rosset Lamar. Opinion, Wheeler, J. U. S. circuit court. Filed April 21, 1882. Joseph M. Deuel, clerk.

287 At a stated term of the United States circuit court for the southern district of New York, held in and for the said district, at the court-house, in the city of New York, October , 1881.

Present, Hon. Hoyt H. Wheeler, district judge.

CHARLES F. McCAY
vs.
G. DE ROSSETT LAMAR. } In equity.

This cause having come on to be heard at the October term of this court, 1881, and having been heard at the said term upon the pleadings and proofs, and after hearing counsel for the respective parties, and after due proceedings had, the court having decided that the complainant was entitled to recover of the defendant the avails of certain cotton in ac-
288 cordance with the opinion filed herein, and the court having ordered that a decree be entered that an account be taken in accordance

with the said opinion, and the reference thereby ordered having been waived and the parties having agreed as to the amount which the complainant was entitled to recover under the decision filed as aforesaid, and having fixed that amount at the sum of twenty-six thousand one hundred and forty-four and $\frac{72}{100}$ dollars ($26,144.\frac{72}{100}$) damages, and two hundred and sixty-six dollars ($266) costs:

Now, therefore, it is ordered, adjudged, and decreed, that the complainant have and recover of the defendant the sum of twenty-six thousand one hundred and forty-four and $\frac{72}{100}$ dollars damages, and two hundred and sixty-six dollars costs, making in all twenty-six thousand four
289 hundred and ten and $\frac{72}{100}$ dollars, and that he have execution therefor.

(S'g'd) HOYT H. WHEELER.

Form of the written decree approved of.

New York, Oct. 11th, 1882.

(S'g'd) DICKERSON & DICKERSON
Sol'r of Def't.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. In equity. McCay vs. Lamar, ex'r, etc. Final decree. U. S. circuit court. Filed Oct. 17, 1882. Joseph M. Deuel, clerk.

290 Circuit court of the United States for the southern district of New York. In equity.

CHARLES F. McCAY
vs.
G. DE ROSSETT LAMAR.

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the U. S. Supreme Court on the appeal to the said Supreme Court in the above-entitled action.

New York, April 28th, 1883.

DICKERSON & DICKERSON,
For Appellants.

J. K. HERBERT,
Sol. for Appellee.

291 U. S. circuit court, southern district of New York. In equity.

CHARLES F. McCAY, COMPLAINANT AND APPELLEE,
vs.
G. DE ROSSET LAMAR, EXECUTOR OF THE estate of Gazaway B. Lamar, deceased, defendant and appellant.

To the honorable the Supreme Court of the United States:

The appeal of G. De Rosset Lamar, deceased, the above-named defendant and appellant, respectfully shows:

That upon the 29th day of August, 1879, the above-named complainant filed his bill of complaint in the circuit court of the United States for the southern district of New York against the above-named defendant, alleging in substance that previous to April, 1874, the Richmond Im-
292 porting and Exporting Company, a Virginia corporation, was the owner of large quantities of cotton; that a special lot of 244 bales of this cotton came into the hands of one Charles A. L. Lamar (who subsequently departed this life), as the property of and for the use of said company, and that said Lamar's father, defendant's testator, administered upon the estate of said Charles, and came into possession of said cotton as the agent and fiduciary of said corporation; that subsequently this cotton was seized by the United States Government, and was sold, and the proceeds thereof paid into the United States Treasury; that this cotton, so seized and sold by the United States Government, included a specific lot of 136 bales held in trust as aforesaid; that defendant's testator brought suit in the Court of Claims for a large quantity of bales of cotton seized by the United States Government, including, among others, this lot of 136 bales, and that he recovered judgment in the Court of Claims in
293 his favor for the sum of $579,343.51, for 3,184 bales of upland cotton and 91 bales of sea island cotton; that $23,844.88 of this amount was allowed by the court for this specific lot of 136 bales, and that the whole of said judgment was paid; that since the death of defendant's testator said corporation, by a proper and full assignment, has transferred and delivered to the complainant all its right, title, and interest in said 136 bales of cotton or the proceeds thereof; that the defendant is indebted to the complainant in the sum of $23,844.88, with interest from the 19th day of April, 1874.

The bill prayed for an injunction against the use and handling of the said proceeds of the said cotton, for a discovery, and for a decree against the defendant, as executor, for the sum of $23,844.88, with interest from the 19th day of April, 1874, less such sum as upon an accounting may be found due for costs, charges, and advances upon said cotton; that
294 subpœna was issued and duly served upon the defendant; that defendant duly entered his appearance on the 2nd day of October, 1879, and his answer was duly filed on the 22nd day of December, 1879, and issue was joined by filing the replication on the 29th day of December, 1879. Thereafter testimony was duly taken on behalf of complainant and on behalf of the defendant, and such proceedings were had in due course of law that, on or about the 31st day of January, 1882, the cause was heard upon the pleadings and proofs in the circuit court of the United States for the southern district of New York, at New York City, by the Hon. Hoyt H. Wheeler, judge of the district court of the United States for the district of Vermont.

Thereafter, on the 21st day of April, 1882, the said honorable Hoyt H. Wheeler filed his decision in the said cause, adjudging that the complainant and appellee is entitled to a decree for the payment of the avails received for the 136 bales of cotton, after deducting the expense,
295 belonging to it and the recovery for it, together with the actual interest which said avails bore if they were invested, and adjudging that an account was necessary of the expenses and charges belonging to this cotton and to the recovery of the sum received for it, and of the in-

terest received, if any, and directing that there be a decree that an account be taken of the charges and expenses chargeable to this cotton and for the recovery of what was received for it, and of the interest received upon the avails of it, if any, and for the payment of the balance to the complainant out of any assets in the estate in the hands of the defendant, with costs.

That thereafter the accounting directed in said decision having been waived, and the parties having agreed as to the amount to which the complainant would be entitled under and in conformity with the decision aforesaid, and having fixed that amount at the sum of $26,144.72 dama-
296 ges and $266.00 costs, a decree was, on the 17th day of October, 1882, duly made and pronounced in this cause, wherein and whereby it was ordered, adjudged, and decreed that the complainant have and recover of the defendant the sum of $26,144.72 damages and $266.00 costs, making in all $26,410.72, and that he have execution therefor. Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said bill of complaint with costs, or such other decree as to the said Supreme Court shall seem just.

297 Dated New York, Dec. 20, 1882.

(S'g'd) DICKERSON & DICKERSON,
Solicitors for Defendant and Appellant.

(Endorsed:) U. S. circuit court, so. dist. of New York. In equity. Chas. F. McCay, compl't & appellee, vs. G. De Rosset Lamar, def't & appellant. Petition of appeal & allowance thereof.

I allow the within appeal.
Dated Dec. 21, 1882.

WM. J. WALLACE.

Due and timely service of the within petition and allowance is hereby admitted.
N. Y., Dec. 21, 1882.

J. K. HERBERT,
Sol'r for Compl't & App'l't.

298 Circuit court of the United States, southern district of New York.
In equity.

CHARLES F. McCAY, COMPLAINANT AND APPELLEE,
against
G. DE ROSSET LAMAR, EXECUTOR OF THE estate of Gazaway B. Lamar, deceased, defendant and appellant.

Whereas the defendant herein is about to appeal to the Supreme Court

of the United States from the final decree herein on the 17th day of October, 1882:

Now, therefore, it is hereby stipulated and agreed by the respective parties to this suit that the defendant and appellant above named may deposit in the New York Life Insurance and Trust Company, of 52 Wall street, in the city of New York, thirty (30) United States four per cent. bonds of the denomination of one thousand dollars each as security
299 that said defendant will prosecute his said appeal to effect, and will pay all costs and damages which may be awarded against him on said appeal, and that such bonds shall remain on deposit with said trust company under this stipulation, and the order to be entered thereon subject to the further order of this court herein.

And it is further agreed that the coupons attached and belonging to said bonds, as they mature, shall be delivered to the defendant and appellant for collection, the said coupons not being intended to form any part of the security hereby provided for.

And it is further stipulated and agreed that such deposit (to be evidenced by the service on complainant's solicitors and the filing in the office of the clerk of this court of a certificate of the said trust company that such deposit has been made, and that such bonds are held by it
300 subject to the order of this court in this suit) shall stay the issuing of any process to enforce the levy and collection of the amount awarded to the complainant by the decree aforesaid in the same manner and with the like effect as if a supersedeas bond, in the usual manner and form as required by law to stay the issuing of such process, were duly executed by said defendant and accepted and approved by the judge of this court.

And it is further stipulated and agreed that in case of the affirmance of the said decree so appealed from either in whole or in part, if the said defendant shall not, within ten days after written notice to his solicitors of the entry of judgment of such affirmance, pay all costs and damages which may have been awarded against him in such appeal and the amount awarded to the complainant by said decree or the part thereof as to which said decree shall have been affirmed, if affirmed only in part, then
301 the said complainant may obtain from this court, on five days' notice to the defendant or his solicitors, an order directing the said trust company to sell such bonds so to be deposited with it as aforesaid in such manner as this court may by its order direct, and out of the proceeds of such sale, after deducting therefrom its lawful charges and commissions touching the same, to pay to the complainant all such costs and damages which may have been awarded against said defendant on said appeal and the amount awarded to him by said decree, or the part thereof as to which said decree shall have been affirmed, if affirmed only in part, and the overplus, if any, to the defendant.

And it is further stipulated and agreed that upon the payment of such costs and damages as aforesaid, and of such amount so awarded to said complainant by said decree, or of the part thereof as to which said decree
302 shall have been affirmed, if affirmed only in part, or in case the said decree shall be reversed, vacated, or annulled, the said defendant may obtain from this court, on five days' notice to the complainant or his solicitors, an order directing the said trust company to turn over to him such

bonds so to be deposited as aforesaid, less said trust company's lawful charges and commissions touching the same.

It is further agreed that this case shall be placed on the calendar of the Supreme Court of the United States for the October term, 1883, and shall be submitted by counsel within the first twenty days from the opening of said term. Counsel for the appellant agrees to deliver his brief to counsel for the appellee thirty (30) days before the opening of said term; and counsel for the appellee agrees to deliver his brief to the counsel
303 for the appellant ten (10) days before the opening of said term. It is further agreed that if for any reason the determination of the cause on appeal should be delayed for a longer time than two (2) years the appellee may apply to the court for an order directing the deposit of additional securities.

N. Y., December 20th, 1882.

(S'g'd) DICKERSON & DICKERSON,
Sol'rs for Defendant and Appellant.

(S'g'd) J. K. HERBERT,
Sol'r for Compl't & Appellee.

(Endorsed:) U. S. circuit court, so. dist. of New York. In equity. Chas. F. McCay, compl't & appellee, vs. G. De Rosset Lamar, def't & appellant. Stipulation as to security on appeal. Dickerson & Dickerson, for def't, Tribune Building, New York. U. S. circuit court, filed Dec. 21, 1882. Joseph M. Deuel, clerk.

304 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on the 21st day of December, in the year one thousand eight hundred and eighty-two.

Present, Hon. William J. Wallace, circuit judge.

CHARLES F. MCCAY, COMPLAINANT & APPELLEE,
against
G. DE ROSSET LAMAR, EXECUTOR OF THE ESTATE of Gazaway B. Lamar, deceased, defendant and appellant.

On reading and filing the stipulation in the above-entitled suit, signed by the solicitors for the respective parties, dated December 2nd, 1882, and upon signing of the petition of appeal and of the citation herein, and upon motion of Dickerson & Dickerson, attorneys for the defendant:

305 It is ordered and decreed that the defendant and appellant above named may deposit in the New York Life Insurance and Trust Company, of 52 Wall street in the city of New York, thirty (30) United States four per cent. bonds of the denomination of one thousand dollars each as security that said defendant will prosecute his said appeal to effect, and will pay all costs and damages which may be awarded against him on said appeal, and that such bonds shall remain on deposit with said trust company under this stipulation and the order to be entered thereon subject to the further order of this court herein.

And it is further ordered, that the coupons attached and belonging to said bonds as they mature shall be delivered to the defendant and appellant for collection, the said coupons not being intended to form any part of the security hereby provided for.

And it is further ordered that such deposit (to be evidenced by
306 the service on complainant's solicitors, and the filing in the office of the clerk of this court of a certificate of the said trust company that such deposit has been made and that such bonds are held by it subject to the order of this court in this suit) shall stay the issuing of any process to enforce the levy and collection of the amount awarded to the complainant by the decree aforesaid in the same manner and with the like effect as if a supersedeas bond, in the usual manner and form as required by law to stay the issuing of such process, were duly executed by said defendant and accepted and approved by the judge of this court.

And it is further ordered that in case of the affirmance of the said decree so appealed from either in whole or part, if the said defendant shall not, within ten days after written notice to his solicitors of the entry of judgment of such affirmance, pay all costs and damages which may have been awarded against him in such appeal, and the amount awarded
307 to the complainant by said decree, or the part thereof as to which said decree shall have been affirmed, if affirmed only in part, then the said complainant may obtain from this court, on five days' notice to the defendant or his solicitors, an order directing the said trust company to sell such bonds so to be deposited with it as aforesaid in such manner as this court may by its order direct, and out of the proceeds of such sale, after deducting therefrom its lawful charges and commissions touching the same, to pay to the complainant all such costs and damages which may have been awarded against said defendant on said appeal, and the amount awarded to him by said decree, or the part thereof as to which said decree shall have been affirmed, if affirmed only in part, and the overplus, if any, to the defendant.

And it is further ordered that upon the payment of such costs and damages as aforesaid and of such amount so awarded to said complain-
308 ant by said decree, or of the part thereof as to which said decree shall have been affirmed, if affirmed only in part, or in case the said decree shall be reversed, vacated, or annulled, the said defendant may obtain from this court, on five days' notice to the complainant or his solicitors, an order directing the said trust company to turn over to him such bonds so to be deposited as aforesaid, less said trust company's lawful charges and commissions touching the same.

It is further ordered that this case shall be placed on the calendar of the Supreme Court of the United States for the October term, 1883, and shall be submitted by counsel within the first twenty days from the opening of said term. Counsel for the appellant agrees to deliver his brief to counsel for the appellee thirty (30) days before the opening of said term; and counsel for the appellee agrees to deliver his brief to the counsel for the appellant ten (10) days before the opening of said term. It is further ordered that if, for any reason, the determination of the cause on appeal should be delayed for a longer time than two (2) years, the appellee
309 may apply to the court for an order directing the deposit of additional securities.

(Signed) WM. J. WALLACE.

(Endorsed:) U. S. circuit court, so. dist. of New York. In equity. Chas. F. McCay, compl't & appellee, vs. G. De Rosset Lamar, as ex'r, etc., def'ts & appellant. Order as to security on appeal. Dickerson & Dickerson, def't's sol'rs.

Due and timely service of the within order by proper delivery of a certified copy is hereby admitted.

N. Y., Dec. 21st, 1882.

J. K. HERBERT,
Sol'r for Compl't & App'l't.

U. S. circuit court. Filed Dec. 21, 1882. J. M. Deuel, clerk.

310 N. Y. LIFE INSURANCE AND TRUST CO.,
New York, December 22nd, 1882.

United States circuit court, southern district of New York. In equity.

CHARLES F. McCAY, COMPLAINANT AND APPELLEE,
vs.
G. DE ROSSET LAMAR, EXECUTOR OF THE ESTATE of Gazaway B. Lamar, deceased, defendant and appellant.

Received from G. De Rosset Lamar, as executor of the last will and testament of Gazaway B. Lamar, deceased, thirty thousand dollars of United States four per cent. consols of 1907, coupon bonds, with all the coupons attached, including those due January 1st, 1883, and numbered as follows, viz: 165350, 165351, 165354, 165355, 207813, 165276, 165349,
165205, 160836, 160829, 160828, 160827, 160821, 160820, 160819,
311 160818, 160817, 165363, 165364, 168494, 168495, 168496, 207810,
207811, 168493, 134030, 127604, 134020, 134017, 66396, for one thousand dollars each, said bonds being deposited under an order of the U. S. circuit court for the southern district of New York bearing date the 21st day of December, 1882, and are to be held by the New York Life Insurance and Trust Company subject to the further order of the said court. The coupons attached and belonging to said bonds, not forming part of the security provided for in said order, are to be delivered to G. De Rosset Lamar, executor, as they mature.

The commission of this company is to be one per cent. upon the par value of said bonds.

THE NEW YORK LIFE INSURANCE AND TRUST COMPANY,
(Signed) By HENRY PARISH, *Pres't.*

312 (Endorsed:) U. S. circuit court, southern district of New York. In equity. Charles F. McCay, compl't and appellee, vs. G. De Rosset Lamar, executor, etc. Triplicate receipt of the N. Y. Life Ins. & Trust Company for $30,000 U. S. bonds deposited with them under order of Dec. 21st, 1882, in the above-entitled cause.

Due service of a triplicate receipt the same as the within is hereby admitted.

N. Y., Dec'r 22nd, 1882.

(S'g'd) J. K. HERBERT,
Sol. for Compl't & App.

Dickerson & Dickerson, solicitors for def't, 154 Nassau st., N. Y. City.
U. S. circuit court. Filed Dec. 22, 1882. Joseph M. Deuel, clerk.

313 By the honorable William J. Wallace, one of the judges of the circuit court of the United States for the southern district of New York.

To Charles F. McCay:

Whereas G. De Rosset Lamar, as executor, &c., of Gazaway B. Lamar, deceased, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said Charles F. McCay, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1883, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 21st day of December, in
314 the year of our Lord one thousand eight hundred and eighty-two.

(S'g'd) WM. J. WALLACE.

(Endorsed:) U. S. Supreme Court. Charles F. McCay, complainant & appellee, vs. G. De Rosset Lamar, executor, etc., defendant & appellant. Citation. Dickerson & Dickerson, Tribune Building, New York.

Due and timely service of the within citation is hereby admitted.
N. Y., Dec. 21st, 1882.

J. K. HERBERT,
Sol'r for Compl't & Appellee.

U. S. circuit court. Filed Dec. 21, 1882. Joseph M. Deuel, clerk.

315 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to three hundred and fourteen inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles F. McCay, complainant and appellee, against G. De Rossett Lamar, executor, &c., defendant and appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25th day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the said United States the one hundred and seventh.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

(Indorsement on cover:) No. 882. G. De Rosset Lamar, as executor of Gazaway B. Lamar, deceased, appellant, vs. Charles F. McCay, S. New York C. C. U. S. Filed 15th June, 1883.

104-235

OCT 30 1883

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 882.

G. DE ROSSET LAMAR, EXECUTOR OF GAZAWAY B. LAMAR, DECEASED,

Appellant,

vs.

CHARLES F. McCAY,

Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Brief for the Appellant.

Filed

EDWARD N. DICKERSON,
Of Counsel.

Evening Post Job Printing Office, N. Y.

U. S. Supreme Court.

G. De Rosset Lamar, Executor of Gazaway B. Lamar, deceased,
Appellant,
vs.
Charles F. McCay.
No. 382

Brief of E. N. Dickerson, for Appellant.

This is an appeal from a decree entered by His Honor Judge Wheeler, sitting in the Circuit Court of the United States for the Southern District of New York, in favor of the appellee, Charles F. McCay, for the sum of $26,410.72, to be paid out of the estate of Gazaway B. Lamar, deceased, of which the appellant is the executor.

Pleadings.

Charles F. McCay, the appellee, filed a bill in equity against the appellant, executor of Gazaway B. Lamar, deceased, for a discovery and an account.

The bill charges:

"I.—That previous to the month of April, 1874, the Rich-
"mond Importing and Exporting Company, a body corporate

" created by and under the laws of the State of Virginia, was " the owner of large quantities of cotton purchased and ac- " quired through various agents acting for its benefit, and in " its behalf, in the State of Georgia and elsewhere."

By referring to the statutes (fols. 59 and 60), it appears that this corporation was created "for the purpose of owning, nav- " igating, and freighting ships and other vessels, engaged in " foreign and domestic commerce, *trading from the ports of the* " *Confederate States of America*;" and "for the purpose of " buying and selling the products and commodities so freighted, " or intended to be freighted."

Otherwise stated, the Richmond Importing and Exporting Company was one of the blockade-running companies of the Confederate States.

The bill then states:

" II.—That among others who were so employed as the " agents and fiduciaries of said company was one T. Edward " Hambleton, who received from your orator several hundred " bales of cotton at Augusta, in the State of Georgia, for said " company, the exact number of bales your orator cannot now " state, but a portion of which, amounting to several hundred " bales, was shipped to Charles A. L. Lamar, now deceased, at " Savannah, in the State of Georgia, *who received the same from* " *said Hambleton as the property and estate of said company, and* " *ever thereafter held the same for its use and benefit.*

" III.—That among the parcels of cotton so shipped there " was a special lot of 244 bales so purchased by said Hamble- " ton, as the agent and fiduciary of said company, and de- " posited with said Charles A. L. Lamar, who subsequently " departed this life, *when his father, the said Gazaway B. Lamar,* " *administered upon the estate of said Charles, and in that capacity* " *came into possession of said cotton, or a portion thereof, and ever* " *thereafter retained possession of said cotton, or the proceeds* " *thereof, as the legal representative of the said Charles A. L. Lamar,* " *and as the agent and fiduciary of said company and your orator,* " as will be hereinafter stated.

"IV.—That subsequently to the time last above mentioned, "the said cotton was taken possession of by the Government "of the United States through its agents, shipped to New York, "and there sold, and the proceeds thereof paid into the Trea- "sury of the United States.

"V.—That subsequently to the time of such sale and deposit "the late Gazaway B. Lamar, from whose possession said cot- "ton was taken, together with other large lots claimed by him, "*brought suit for the recovery of the proceeds thereof* in the "United States Court of Claims, where it was docketed as "number 3222, on the trial docket of said court; to the pro- "ceedings in which, and the record thereof, your orator prays "leave to refer from time to time, as may be necessary for the "purposes of this suit.

"VI.—That among other portions of said 244 bales of cot- "ton so held by said Gazaway B. Lamar, *as the legal repre- "sentative* of said Charles L. Lamar, was a lot of 69 bales "marked 'E T A' or 'E T Y,' and another lot of 67 bales "marked 'X Y Z,' making a total of 136 bales *which had "been delivered by your orator* to said Hambleton, and which "was held in trust for the use and benefit of said company and "your orator, as aforesaid.

"VII.—That in and pending said suit in said Court of "Claims said Gazaway B. Lamar, among other quantities and "lots of cotton, *sued for and claimed said* 136 *bales last above "mentioned*, so held in trust as aforesaid.

"VIII.—That among other proceedings in said suit said "Gazaway B. Lamar prepared, printed, signed, and filed in "said Court of Claims a summary of the several lots of cotton "so *owned, held, and claimed by him, amounting to* 3,553 *bales*, "which for convenience and certainty he subdivided and num- "bered in lots from 1 to 28 consecutively, and when referring "to the portion of said cotton so placed in the hands of "Charles A. L. Lamar, amounting to said 136 bales last above "mentioned, in subdivision '26' of said summary statement, "he described the same in the words, letters, and figures fol- "lowing, to wit:

"No. 26. 136 bales of upland ('ETA' or 'ETY' 69, 'XYZ' "67, received and advanced upon by C. A. L. Lamar, for a "person in Virginia, and were rebagged and compressed for "the OWNER. THE OWNER made inquiry for them since the war, "but, when informed of their being taken by the United "States, declined to pay the advances made upon them. 136 "bales uplands.

"This parcel of 136 bales were received and the freight "paid by Charles A. L. Lamar, *who advanced money upon* "*them;* they were taken from the press warehouses and my "possession, and constituted a part of the 3,553 bales."

"X.—That *included in said judgment* so rendered by said "Court of Claims in favor of said Gazaway B. Lamar, *was the* "*proceeds of said* 136 *bales of cotton*, particularly described in "paragraphs VI. and VIII. of this Bill of Complaint, which, "at $175.33 per bale, the amount allowed by said court for "upland cotton, amounted to $23,844.88.

"XIV.—That since the death of said G. B. Lamar, *said com-* "*pany has, by a proper and full assignment, transferred and de-* "*livered to your orator for value all and singular its right, title,* "*and interest in and to said* 136 *bales of cotton, and the proceeds* "*thereof, to wit:* the said sum $23,844.88, as recovered and re- "ceived by said G. B. Lamar, and all and singular the right to "sue for and recover the same.

"XV.—That the said G. De Rossett Lamar, the defendant "herein named, as the executor of the said G. B. Lamar, de- "ceased, has at all times evaded and refused, and still refuses "to pay over said money to said company or your orator, "while at the same time admitting his possession of the same, "and pretends to require proofs that are or ought to be in his "possession, as such executor, to wit: *the books, papers, and* "*accounts of the said Charles A. L. Lamar, which contain the* "*evidence of the receipt of said cotton by said Charles A. L. Lamar,* "*deceased, and which passed into the hands of defendant's testator* "*and are in the possession, or subject to the control of, the defend-* "*ant as such executor, and not accessible to your orator.*

"XVII.—That said company at all times was, and since

" becoming the assignee of its title and estate therein your " orator has at all times been ready and willing to pay to said " G. B. Lamar and this defendant all proper costs, *charges and* " *advances upon said* 136 *bales of cotton* as called for in the said " advertisement of April 19, 1874, and now and hereby ten- " ders the same; but neither said G. B. Lamar nor the de- " fendant has ever prepared or stated an account, though " frequently thereunto requested, showing the amount of said " charges and advances, and *without being advised by the inspec-* " *tion of the books, papers, and accounts of the said Charles A. L.* " *Lamar and said G. B. Lamar, now in the possession or under* " *the control of the defendant, as aforesaid,* your orator is not " able to state what are the just and legal charges against said " cotton, and for this reason, among others, is entitled to *dis-* " *covery* from the defendant of the books, papers, and accounts " aforesaid.

" XVIII.—That by reason of the premises the defendant, as " such executor, is indebted to your orator, as assignee as " aforesaid, in the sum of $23,841.88, with interest from the " 19th day of April, 1874, less such sum for costs, *charges and* " *advances as may be found,* upon an accounting, to be justly " and lawfully due as against said 136 bales of cotton.

The legal effect of this bill in equity is that the complainant charges Gazaway B. Lamar, *as the administrator of Charles A. L. Lamar,* with the possession of certain assets which were in the possession of the estate of said Charles A. L. Lamar, but which assets, subject to an accounting between the complainant's *assignor and the said Charles A. L. Lamar,* belong to the complainant, and for which he calls the executor of the deceased administrator to an account. A discovery also of the books of Charles A. L. Lamar is required—those books containing the accounts between the complainant assignor and the said Lamar, which must be settled before a decree can be had.

The Answer.

The appellant " specially denies that, as is alleged in said " bill of complaint, the said Gazaway B. Lamar administered

" upon the estate of said Charles A. L. Lamar, and in that " capacity came into the possession of certain cotton, or any " part thereof, belonging to the said company in any way, as " is alleged in said third paragraph of said bill of complaint."
Folio 12.

He admits that Gazaway B. Lamar brought suit for the " proceeds of certain cotton that had been *owned by him*," but he " denies that claim was made in said suit for any cotton " which was or ever had been the property of the complainant " herein."

" And he further especially avers that the said Gazaway B. " Lamar *did not, in said suit in said Court of Claims, sue for and " claim said* 136 *bales referred to in said seventh paragraph of " the bill of complaint, or any other number of bales which he, the " said Lamar, held in trust.*"

He denies " that there were included in said judgment so " rendered by said Court of Claims the proceeds of the 136 " bales of cotton particularly described in paragraphs VI. and " VIII. of said bill of complaint, or of any smaller number of " said bales of cotton, or for any amount or value thereof; and " that no amount was allowed by said court on account of said " cotton."

He denies " that the said Lamar *then and there, or at any " other time, received the sum of* $23,844.88, *or any other sum, in " trust to the use and benefit of the said company, and the com- " plainant herein,* as is alleged in said eleventh paragraph of " the bill of complaint herein; and he further denies *that said " sum, or any part thereof,* has ever since remained in the hands " of the said Gazaway B. Lamar or this defendant, in the like " trust or in any other trust, as in said complaint stated."

He denies " that, as *such executor, he came into the possession " of and still holds said* $23,844.88, *or any other sum, as the pro- " ceeds of any cotton belonging to the said company,* as set forth in " said thirteenth paragraph of said bill of complaint."

" He denies that since the death of the said G. B. Lamar " *the said company has, by proper and full assignment, transferred " and delivered to the complaint herein for value,* all and sin- " gular its right, title and interest in and to said 136 bales of " cotton and the proceeds thereof."

He alleges " that the said company ceased to exist long be-

" fore the death of the said Gazaway B. Lamar, and that no " one since the death of the said Gazaway B. Lamar has had a " legal right to make the assignment in question, or any other " assignment in behalf of said company."

" He denies that any proofs of such ownership are or ought " to be in his possession as such executor as is alleged in the " fifteenth paragraph of the said bill of complaint, to wit, the " books, papers and accounts of the said Charles A. L. Lamar."

He avers that he "has no knowledge as to whether said " company or the complainant has at all times been ready and " willing to pay all proper costs, charges and advances upon said " 136 bales of cotton as is alleged in said bill of complaint, and " therefore denies the same, but he admits that neither the " said Gazaway B. Lamar nor the said defendant has ever pre- " pared or stated an account, showing the amount of said " charges and advances, and that there are no books, papers and " accounts of the said Charles A. L. Lamar and the said G. B. " Lamar now in his possession or under his control, from " which he is able to obtain any information in regard to the " amount of the just and legal charges against said cotton; " and therefore he avers, upon information and belief, that the " amount of said just and legal charges *were equal to the full* " *value of said cotton, or of any sum that was obtained therefor* " *in said suit by said Gazaway B. Lamar.*"

And the defendant, further answering, says: "he admits " that said Gazaway B. Lamar did recover from the United " States, in suit brought by him in the Court of Claims, " $579,813.51 on account of certain cotton taken from him by " the agents of the United States, but he avers that all said " recovery was obtained *on account of cotton belonging to him, the* " *said Gazaway B. Lamar*, and that it was obtained by reason " of the fact that he, the said Gazaway B. Lamar, was a loyal " citizen of the United States at the time the said cotton was " taken away from his possession, and that in said suit the " said Gazaway B. Lamar *only made claim for cotton that belonged* " *to him, and in said suit he could only lawfully have received and* " *did only receive for cotton belonging to him.*

" And defendant, further answering, says: that if in said " suit the said Gazaway B. Lamar made any recovery on ac- " count of cotton which did not belong to him, but on which he " had made some advances, and so had some property or owner-

" ship therein, yet nevertheless the said Gazaway B. Lamar in " said suit *could only lawfully have recovered, and only did recover*, " on account of said cotton, the actual amount of his said prop- " erty and advances and interest therein.

" And defendant, further answering, says: on informa- " tion and belief, that said Richmond Importing and Exporting " Company was a corporation specially organized by the laws " of the State of Virginia, during the war of the late rebellion, " for the purpose of exporting cotton from the Confederate " States and of violating the blockade established by the United " States, and in various ways, direc ly and indirectly, making " war upon the United States, and that all the officers and " stockholders of said corporation failed at all times during " said war of the rebellion to bear true allegiance to the United " States.

" And defendant further alleges that said corporation was " never lawfully in existence, and that any existence that it did " have terminated in the year 1865, and that since that time it " has never had any property, officers or been in any condition " to lawfully bring any suit, make any claim, give any release " or make any assignment."

First Issue.

The apellant having denied that Gazaway B. Lamar administered upon the estate of Charles A. L. Lamar, the complainant furnished no proof to support his allegation; but, on the contrary, put in evidence two letters from G. B. Lamar (folio 38) from which it appeared that Charles A. L. Lamar left a will and an executrix; and so the fact is, and so the court finds the fact to be. The whole foundation, therefore, of the suit fails at once.

The answer also denied that Gazaway B. Lamar, or his executor, had the books or accounts of Charles A. L. Lamar, for a discovery of which, among other things, this bill was filed; and so the fact is. The books of Charles A. L. Lamar perished in Savannah and were never at any time in the possession of G. B. Lamar or his executor.

There was no foundation, therefore, for either discovery or

an account; and without going any further the bill should have been dismissed.

The complainant put in evidence what purported to be an account between Charles A. L. Lamar and the Richmond Importing and Exporting Company (page 26), from which it appears that that company owed C. A. L. Lamar $20,987. The object of presenting this account was to show, what the bill alleged, that there was an account between Charles A. L. Lamar and the Richmond Importing and Exporting Company, and that Charles A. L. Lamar's *administrator* was liable to the assignee of the company under a settlement of that account.

The account purported to be one made by C. A. Lamar. It turned out, however, that C. A. L. Lamar never saw it; that it was made by a bookkeeper of a man named Hambleton; and that it was not any copy or transcript of any book of the Richmond Importing and Exporting Company (p. 37, Q. 22-23, and p. 30, Q. 6).

This account, however, if it has any force or effect, shows that there is an unsettled account between the Richmond Importing and Exporting Company and Charles A. L. Lamar, which can only be settled by making Charles A. L. Lamar's executors a party to a suit appropriate to that end, and which cannot be settled by suing a stranger to the transaction, which Mr. G. B. Lamar was.

It will appear hereafter that his Honor decided the case, after finding that G. B. Lamar *was not the administrator* of his son, as charged in the bill, by holding his estate liable upon the theory that he *was a partner* of C. A. L. Lamar, and that the cotton in question had come into his hands in that capacity. The fact was not so, as will hereafter appear; but if it had been, no recovery could have been had under the pleadings in this case. In such a case, a bill must have been framed against the surviving partner, and the rights and equities of the partnership must have been taken into the account, and the settlement made upon that basis. If he had been charged as a partner, he would have denied it, and his denial would have been true. Not having been so charged in the bill, he had not the opportunity of making that denial, but a judgment was pronounced against him upon that allegation which he had no opportunity to traverse. Unless the law has been recently changed that

the *allegata* and *probata* must agree, a judgment founded upon the theory of partnership is erroneous under the pleadings in this case.

Second Issue.

The bill charges that C. B. Lamar "*sued for and claimed said* "136 *bales* last above mentioned so held in trust as aforesaid," and that averment is denied. Of course, the record of the suit is the best evidence of what the suit was, and it establishes beyond the possibility of question that no such suit was ever brought by Gazaway B. Lamar. The pleadings in the Court of Claims are informal, but they raise a perfectly clear and distinct issue. They begin with a petition filed April 1, 1862 (p. 52). The opening statement of that petition is that "in the "year 1865 your petitioner was the OWNER *and in possession* of "4,185 bales of cotton, of the average weight of 500 pounds "each, and of the aggregate weight of 2,082,500 pounds, OF "WHICH 3,275 WERE STORED IN THE CITY OF SAVANNAH, Georgia." It then states that 522 bales were at Thomasville, Georgia, where they were seized by Treasury Agent Brown; and that 426 bales were at Tallahassee, Florida, and there seized by Agent Cabell.

There is an obvious mistake in this petition in the number of bales seized at Thomasville, which is set down as 522; it should have been 484, and at that rate the three items aggregate the 4,185, of which Mr. Lamar was the owner.

The Thomasville cotton was sued for in the case of Lamar *vs.* Brown, and at *p.* 191, 2 *Otto*, the true amount of that cotton is stated at 484 bales. In Mr. Lamar's will also (Record, p. 18) he states the amount truly at 484.

It probably was a clerical error in the petition; but it is of no consequence in this case, because the controversy relates exclusively to the 3,275 *bales which were in the City of Savannah, and which he owned*; and which he swears in that petition *he owned*; and for which amount precisely he recovered his judgment in the Court of Claims—having withdrawn his claim for the Thomasville and the Florida cotton, as will hereafter appear.

This petition was drawn by Mr. Lamar and sworn to by

himself; and in it he swore that he was the "*owner*" of all the cotton mentioned in it, as by statute he must; of which, 3,275 bales were stored in the City of Savannah.

Afterwards, and on the 12th day of May, 1869, Hughes. Denver & Peck, solicitors for Lamar, filed an amended petition (p. 54), which was *not sworn to* by Mr. Lamar, but by Charles F. Peck, upon information and belief.

In this petition it is alleged that Mr. Lamar was the owner of 4,185 bales of cotton "*stored in the City of Savannah*, in the "State of Georgia;" and no mention whatever is made of the two parcels of cotton claimed in the petition of Mr. Lamar himself, which were seized at Thomasville, and at Tallahassee. The total sum 4,185 is the same as in Mr. Lamar's petition, but this petition alleges it to have been all *stored* in Savannah.

On the 16th of April, 1882, Hughes Denver & Peck, filed another petition (p. 56), which *was sworn to by nobody;* in which they made another statement of the facts. They say "that in the month of December, 1864, he was, and for a long "time prior thereto, had been IN POSSESSION *of* 4,185 *bales of cot-*"*ton.* Of this he was the ABSOLUTE OWNER in his own right of 3,793 "bales, of which 199 bales were Sea Island, and 3,594 were "upland cotton, and that he held as a commission merchant "392 bales, on which he had made cash advances, and in "which, therefore, he had a special property until he sold the "goods, and reimbursed himself for the advances."

This petition again took no notice of the Tallahassee and Thomasville cotton, but claimed 3,793 bales as the "*absolute "property," of Mr. Lamar, all in Savannah*; and it then accounted for the 392 bales, the balance of the 4,185 bales, as follows: "Of the 392 bales, 256 were held on account of the estate of R. "Thompson deceased, and 136 bales on account of —— Holland, "Richmond, Va." This is a specific statement that the 136 bales were not Lamar's property at all, but had been held by him "on account of Holland." What was claimed, in addition to these two items, *as Lamar's own*, was 3,793 bales.

Afterwards, on the 20th of May, 1873, Gazaway B. Lamar swore to and filed his "amended petition, *in lieu of and "as a substitute for all other petitions and amendments thereto, "heretofore filed in this cause*" (p. 58). And this was the petition upon which the case was tried, and the recovery had; and upon nothing else than that which this petition set forth.

It states, that "in the year 1865, your petitioner was the "OWNER *and in possession of* 3,701 *bales of cotton,* of the average "weight of 500 pounds each, of which 3,275 *were stored in the* "*City of Savannah, Georgia.*"

This statement is a repetition precisely of his original petition, drawn up and sworn to by himself, leaving out of it the Thomasville cotton for which he had brought suit in the Circuit Court of the United States at Boston, November 7, 1871, between the time of filing his original petition in the Court of Claims, and the time of filing this substituted petition. (See Supreme Court Record, No 151, October Term, 1875, p. 3, Lamar *vs.* Brown.)

In this substituted petition he claims 3,275 bales in the City of Savannah, and 426 bales seized in the months of October, November and December, 1865, near Tallahassee, in the State of Florida. These are the same 426 bales specified in his original petition, which he yet pursued in this suit. As in the first petition he swore that he was the *owner of and in possession of all this cotton;* and with scrupulous accuracy in the petition he stated the exact condition of his ownership where there was any qualification of it. He said (p. 60:

"Petitioner further shows that as to 446 bales of said cot-"ton one William W. Cheever was interested to the extent of *one-*"*half in the profits to be derived from the sale of said cotton,* "*together with other lots of cotton not referred to in this petition.* "That as to 2,371 bales of said cotton the said William W. "Cheever and one Charles A. L. Lamar, were interested in the "PROFITS to be derived from the sales of said cotton, to the ex-"tent of one-third each, *together with other lots of cotton not men-*"*tioned in this petition.*

"That as to 256 bales of cotton claimed in this petition, it "was purchased and paid for by petitioner for one D. A. "Martin or Robert Thompson, and was held by him to be de-"livered to the said Martin or Thompson upon payment of "the price and charges, but such payment has never been "made."

By comparing this petition on which the case was tried, with the third petition filed by Denver & Peck, and which was withdrawn and substituted by this one, it appears that in Denver & Peck's third petition (page 56), it was stated that Mr. Lamar was "the *absolute owner* in his own right of 3,793 bales

" * * * * * *which was stored in the City of Savannah,* in " the State of Georgia," and that he had a qualified interest in 392 bales, of which " 256 were held on account of the estate " of R. Thompson, deceased, and 136 bales on account of " Holland, of Richmond, Virginia." In the substituted petition, made by Mr. Lamar himself, who knew the facts, he reduces his claim for cotton of which he was the absolute owner, and which was in the *City of Savannah,* to 3,275 bales, from 3,793 bales set forth in Denver & Peck's petition; thereby throwing off 518 bales in the *City of Savannah.* He added, however, 426 bales which had been seized in Tallahassee, and which never were in Savannah, thus making up the total of 3,701 bales. Why Mr. Lamar disclaimed these 518 bales and more, which undoubtedly were his in the *City of Savannah,* as the proofs afterwards showed, does not appear. In the brief filed by his solicitors, they say (p. 201), " Mr. Lamar " only claims 3,275 bales *stored in Savannah.* This discrepancy " *in his favor* of 782 bales he can explain, and will be glad of " an opportunity to do so." So far as it appears, the court never asked him for that explanation, inasmuch as it was a concession made by himself, and it never has appeared in the case. But it is perfectly certain that he did reduce his claim below that of the third petition to 3,275 bales—his own property in Savannah ; and he omitted any mention in the final petition of 136 bales—*the property of Holland*—which Denver & Peck had put in their petition—they not claiming it as his property, but mentioning it as property in which he might have an interest. He, however, retained in his petition the 256 bales of Martin & Thompson cotton, which they also had enumerated in their petition. It follows, therefore, that he did not claim in any one of the petitions to be the owner of, or to be compensated for, the 136 bales ; and that in the petition on which the case was tried he expressly omitted any mention of it whatever.

Analyzing the petition on which the case was tried, and there appear to be four classes of cotton named in it:—

1st. There were 446 bales, in which " W. W. Cheever was " interested to the extent of *one-half in the profits* to be derived " from the sales of said cotton."

2d. There were 2,371 bales of cotton in which " W. W. " Cheever and C. A. L. Lamar were interested in the *profits to* " *be derived* from the sales of the said cotton to the extent of " *one-third each.*"

3d. 256 bales had been " purchased and paid for" by Mr. Lamar, for one Martin or Thompson, who had died without reimbursing him, or taking away their cotton ; and he claimed it as his own, as he ought to have done.

4th. That left 628 bales which Mr. Lamar owned unqualifiedly—the total being, as the petition states, 3,701 bales.

As the record shows, Mr. Lamar had two special ventures in cotton purchases, in one of which Cheever was entitled to one-half of the profits, he having been the purchasing agent going about the country and buying the cotton, and Mr. Lamar furnishing the money ; and in the other one of which Cheever and C. A. L. Lamar were interested one-third each in the profits—Mr. Lamar furnishing the money, and they buying and dealing with the property for joint account. These are the two special *partnerships* in the case; and there is no pretense that the 136 bales of cotton claimed by this complainant formed any part of either of those two lots.

Nor is it claimed that it formed any part of the 256 bales which Mr. Lamar bought for Thompson. If, therefore, it is to be found in the 3,275 bales for which Mr. Lamar recovered a judgment, it must be in the 628 bales which in his petition he swore he owned himself, free from any claim by any person whatever.

It is apparent, therefore, on the inspection of the record, that Mr. Lamar *did not sue* for the 136 bales, as the bill of complaint alleges, and as the answer denies. If he recovered for it, it must have been by some means outside of his suit.

Third Issue.

The bill alleges, however, that he did recover for the 136 bales ; and the answer denies it. The record again sustains the

answer, and shows that he did not recover one dollar for those 136 bales.

The evidence before the Court of Claims is before this court in the record of that case; and every bale of cotton for which Mr. Lamar recovered is traced and identified by witnesses; and the amount which he proved himself to have owned *is greater than the amount he recovered by several hundred bales*, without any reference whatever to the 136 bales claimed in this case.

A convenient way to follow that testimony is to take the brief of Hughes Denver & Peck, in which the proof was submitted to the Court of Claims, and in which the cotton was all traced by the witnesses. It begins on the 196th page of this record.

Under the first title, "Ownership and Seizure," Mr. Lamar's solicitors made the following statement in their brief (p. 197):

"The proof as to the *ownership* of this large amount of "cotton is found in various parts of a bulky record, and in "order to render the court all necessary assistance, we will "divide the cotton into four lots.

"Mr. Lamar *purchased a few hundred bales in the City of "Savannah*, which were stored in various places, where it re- "mained until seized by the United States forces. These will "constitute the first lot.

"There are several specific lots of cotton *which were bought "for Mr. Lamar outside of the City of Savannah* by other "agents than Mr. Cheever, who was his principal agent, and "sent to that city. These will constitute the second lot.

"Mr. Lamar employed one W. W. Cheever to *purchase a "very large amount of cotton for him* outside of the City of "Savannah, and under this employment purchases were made "to the amount of 5,768 bales. Of these, 2,500 were sold by "Mr. Lamar to the Importing and Exporting Company, leav- "ing 3,268 *the property of claimant*. The railroad receipts will "show that a large portion of these purchases were re- "ceived in Savannah, and these will constitute the third lot.

"The balance of the cotton purchased by Mr. Cheever and "not sent to Savannah was seized at Thomasville, Georgia, "and at Tallahasse, Florida.

"These will constitute the fourth lot."

They then take up each of the lots of cotton, and trace it by reference to the testimony. In the first lot they trace 380 bales, and show whence it came (see p. 199).

In the *second*, all *bought* outside of Savannah by other agents than Cheever, it appears that E. Remington & Son bought for Mr. Lamar 296 bales; Young, Woods & Gardner bought 361 bales; and W. J. Anderson bought 41 bales, making 698 bales of that lot.

Under the *third* head of cotton purchased for claimant by W. W. Cheever, *outside of the City of Savannah*, they showed 3,268 bales, after deducting 2,500 bales that had been bought by Cheever, but had been sold by Mr. Lamar to the Importing and Exporting Company of Georgia.

On page 200 there is a *resumé* of these three lots, making a total of 4,346 bales bought by and for Mr. Lamar, by and from the different persons mentioned in the testimony.

They then proceeded to show the transportation bills of the railroads which brought the cotton to Savannah; and it appears that out of the 3,966 bought outside of Savannah, 3,929 bales *were transported to Savannah*; and every lot is specified with the proper voucher of one of the two railroads which transported it. In the Supreme Court record the bracket marginal paging is the paging of the Court of Claims record, so that this court can readily verify the proof on which Mr. Lamar recovered by referring to the evidence in the Court of Claims record. As for example, on page 201 is the summary of the railroad transportation account. The first item is receipt "No. 1, page 141, A. & G. R. R., 579 bales." Referring now to the marginal paging, it appears that the marginal page 141 is on page 183 of the Supreme Court record; and there is the receipt No. 1 of the A. & G. R. R. Co. for transporting 579 bales, paid by G. B. Lamar, October 8, 1862. All the other items are equally well proved, and can be traced through the testimony with equal facility.

The result of that proof, as shown by the brief, is that Mr. Lamar owned 380 bales of cotton purchased in Savannah; and 3,677 bales forwarded to Savannah from the interior where it had been purchased for him by his agents—total, 4,157 bales, which were *his own, paid for by himself*, and of which the 136 bales claimed by this complainant formed no part.

The Richmond company had consigned its cotton to Charles A. L. Lamar, as a commission merchant, so far as there is any proof in the case at all; and it is said that he held 244 bales of it, but there is no evidence of any kind that these 136 bales ever were any part of those 244 bales. At any rate, there is no pretense by anybody that these 136 bales ever were purchased by G. B. Lamar; or ever were consigned to him; or that they ever were in his possession, otherwise than that 136 bales were stored in one of his warehouses, along with other people's cotton, when the Government seized the cotton in it. How they got there does not appear.

After having shown that Mr. Lamar owned 4,057 bales of cotton in Savannah, which had been taken by the Government, the brief says, that "Mr. Lamar ONLY CLAIMS 3,275 bales "stored in Savannah. This discrepancy *in his favor of* 782 "*bales*, he can explain, and will be glad of an opportunity to do so (fol. 261);" and the judgment of the Court of Claims was for this reduced amount, rendered after the proof which showed a greater amount to be his due.

The brief concludes with this statement (p. 202):

"We therefore close our statement as to the Savannah cottons, by recapitulating the proof, as follows:

"We show that complainant *purchased and had in his pos-* "*session in the City of Savannah*, 380 *bales;* that he sent into "the interior and *purchased by other agents than Cheever*, 698 "*bales;* by Cheever 3,268 bales; total, 3,966 bales; that he "received over the railroad, consigned to himself, with every "indicia of ownership, on which he paid the freight, 3,929 "bales; that he had stored in his warehouse and in buildings "rented by him for several months, and, in some instances, for "several years, 3,757 bales; that the United States authorities "seized from his possession, *as his property, and so recorded on* "*the books of the seizing officer*, 3,553 bales; that this cotton was "not only in his possession, but was *originally paid for by him* "*and stood as his own*, and openly claimed as his private prop- "erty, and taken possession of as such by the United States; "that *his private books and papers, which would expose any* "*attempt at concealment or misrepresentation, have been for many* "*years, and are now, in the possession of the defendant.*

"The amount of Savannah cotton claimed is 3,275 bales. "The transcript from Book E (p. 24), shows that 91 bales of "sea island were shipped to New York. This would leave "3,184 of upland. At $231.79 and $175.33 per bale respect- "ively, this amounts to $579,343.61."

The 426 bales seized at Tallahassee, Florida, were dropped by Denver & Peck, for the reason mentioned in their brief.

The Judgment.

The judgment was for the exact amount claimed in the brief of Denver & Peck, and is in these words:

"At the time of the capture of the City of Savannah, Geor- "gia, in December, 1864, by the military forces of the United "States, under General Sherman, the CLAIMANT OWNED in said "city ninety-one bales of Sea Island cotton, and three thou- "sand one hundred and eighty-four bales of upland cotton, all "of which were captured by said forces and shipped to Simeon "Draper, agent of the Treasury Department at the City of "New York, and there sold by him, and the proceeds thereof, "amounting to $231.79 per bale for the Sea Island cotton, and "$175.53 per bale for the upland cotton, aggregating five "hundred and seventy-nine thousand three hundred and forty- "three dollars and fifty-one cents ($579,343.51), paid into the "Treasury of the United States.

"Upon the FOREGOING FACTS, THE CONCLUSION OF LAW IS, "that the claimant is entitled to recover the proceeds of said "cotton as stated."

I submit to the court that it is as certain as any possible certainty that the judgment of the Court of Claims was not for any cotton whatever, except that which the petition claimed, and the ownership of which he proved. And there is no word of proof in respect to the 136 bales of cotton which Mr. Lamar did not own, and which neither Mr. Lamar, nor any other witness, has ever said in this case were ever consigned to him, or that he had any interest in them at all. Nor does Judge Wheeler say that Mr. Lamar had any interest in the cotton.

If that is so, then this issue between the parties must be

found in favor of the appellant; and no recovery can be had against him on the ground that his testator recovered from the Government of the United States $23,844.88, the proceeds of 136 bales of cotton, claimed to have been the property of the Richmond Importing and Exporting Company.

The record speaks for itself. If there was any claim made for these 136 bales, or any proof offered in respect to them—if there is any single bale of those for which Mr. Lamar recovered that is not specifically proved to be his own absolute property, bought and paid for by himself—that can be shown to the court; and I challenge the production of a word of *proof*, in that record, to the effect that Mr. Lamar ever claimed to own, or to recover for these 136 bales.

Mr. G. B. Lamar's Brief.

In addition to the brief of Denver & Peck, Mr. Lamar filed an additional brief April 22d, 1873, which is printed on the 203d page of the record. This brief is contained in the record of the Court of Claims under the certificate of the clerk, found on page 207. That record has the name of the clerk written on every page of it, and the certificate is that the record is true "*as the same appeared to the Chief Justice and Judges of the* "*Court of Claims, when the said cause came on to trial on the* 20*th* "*day of May*, 1873."

In this record, as it is on file in the clerk's office of the Court of Claims, and as the certified copy shows, a portion of this additional brief, as it was originally printed, is struck out; and when the Supreme Court record was printed, that which was struck out in the Court of Claims record was omitted in the printing. On the other hand, the complainants have a certified copy of this brief by itself, and not of the entire record, from the Clerk of the Court of Claims, on which the clerk certifies as follows:

"I certify that the annexed printed pages contain a true "copy of the additional brief for claimant *filed in said cause* "April 22d, 1873."

This certified copy of a single paper was submitted to Judge Wheeler, as impugning the correctness of the certified record; and it seems that His Honor accepted this certified brief, instead of the certified record, as the true evidence in the case. Aside from the legal effect to be given to a certified record, as compared with the certified brief itself, it appears upon inspection that the clerk did not write his name on each page of the certified brief given to the complainants, and, therefore, it lacks that certainty due to a comparison, page by page, which the record possesses; and the probability is, that some clerk in the office, looking at the general appearance of the printed brief offered to him for certification, certified it without carefully examining it page by page.

But, when the two certificates are compared, it appears that the certificate of the brief only certifies that that is a brief which "*was filed.*" The certificate of the record is that that is the form in which "the same appeared to the Chief Justice "and the Justices of the Court of Claims when the cause came on to trial."

It is altogether possible, therefore, that Mr. Lamar filed his brief, and then, afterwards, and before it was submitted to the court, the lawyers struck out the parts which appeared to be struck out in the record; and in that case the two certificates might be both true and consistent. The two exhibits will appear to the court for inspection.

The Erasures in the Brief.

The words stricken out of the original print of Mr. Lamar's own brief, before it was submitted to the court, are these:

"1st. For cotton belonging to himself.

"2d. For cotton bought by W. W. Cheever on joint account "but wholly paid by him (See A. S. Lawson's testimony, p. "41).

"3d. For cotton bought by W. W. Cheever on joint account "with W. W. Cheever, C. A. L. Lamar, and himself, but paid "for wholly by himself (see A. S. Lawson, p. 41), in which the

" other *partners* were interested in one-third of any profits that " might be made.

" 4th. For cotton bought and paid for by himself, in which " C. A. L. Lamar, his son, was to have one-half of the profits.

" 5th. For cotton *bought and paid for by his son*, in which he " was half interested.

" 6th. For cotton advanced upon by him and his son, C. A. " L. Lamar, which was taken from his possession as aforesaid; " AND FOR COTTON ADVANCED UPON BY HIS SON, AND FOR EXPENSES " INCURED THEREON BY HIM.

" 7th. That he claims all the interest of both of his deceased " partners in the foregoing cases, both as *surviving partner*, and " as creditor in possession as regards both of them; and their " decease is proven by A. S. Lawson (p. 41), and that the " money for Cheever was furnished by claimant (p. 43); that " Mr. Cheever was bankrupt and largely indebted to claimant, " by same witness (p. 81), and that there was a large deficiency " growing out of these purchases (at the foot of p. 81), and a " previous indebtedness, also at page 82, upwards of $100,000."

It seems that Judge Wheeler's judgment was founded upon some of the words thus stricken out of the brief.

He says in his opinion (p. 209):

" The bill alleges that Gazaway B. Lamar received this cot- " ton *as executor* of C. A. Lamar, and held it as such, when it " was seized. The answer denies that he was the executor of " C. A. Lamar, or held it as such. The proof does not support " the bill, but sustains the answer on this point. He appears " to *have received it as surviving partner.*"

The matter tending to show that G. B. Lamar was surviving partner of C. A. L. Lamar is in that portion of his brief which was struck out before it was submitted to the court; and it was argued to Judge Wheeler in print, by the complainant, that that statement "*estopped*" Mr. G. B. Lamar, and that the court was bound to find, as it did find, that the father and son were partners; and further than that, that the father received the proceeds of

the 136 bales as *surviving partner* of his son; and the court so found. By reading, however, the struck out portion, which contains, so far as it *states any fact*, the *entire truth*, it appears exactly what was the partnership referred to by Mr. G. B. Lamar. He first claims for the "cotton belonging to myself." The second, third, fourth, and fifth paragraphs show the facts under which these different persons were partners *quoad hoc*—that is to say, Cheever and C. A. L. Lamar were jointly interested in the profits of *cotton purchased by G. B. Lamar*; and G. B. Lamar was interested with C. A. L. Lamar in cotton, *bought and paid for by C. A. L. Lamar*, in definite shares; but there was no general partnership between them, and never was; and the special partnership had no relation whatever to the commission accounts of Charles A. L. Lamar, who was a commission merchant on his own account, and to whom it is said by complainant the cotton in question was consigned. It, therefore, is not true, as assumed by the court, that G. B. Lamar received any cotton or money as partner of C. A. L. Lamar in relation to the cotton in controversy here, even if the erased brief were evidence.

The sixth paragraph of the stricken out matter is "for cotton advanced upon by him and his "son, C. A. L. Lamar, which was taken from his "possession as aforesaid; and for cotton advanced upon "by his son, and for expenses incurred thereon by him." All this was struck out of Mr. Lamar's brief for many reasons; the first of which is, that there was no such matter in the petition; the second is, that there was no proof in regard to the matter at all before the court; the third of which is, that by law he could not have recovered out of the proceeds of cotton seized by the Government for money advanced upon it by his son under any circumstances. Charles A. L. Lamar died in battle against his country, and neither he nor his executrix had any standing in the Court of Claims under the statute under which G. B. Lamar recovered; and G. B. Lamar was not his executor or administrator, and could not recover for him. If these 136 bales were a part of the 244 said to have been consigned to C. A. L. Lamar, then they probably came within the description of this paragraph of the brief; but as there was nothing in the petition or proof on the subject it

was purely irrelevant, and of course was struck out by the lawyers.

Mr. Lamar's brief, however, is true in every fact; and it confines his claim *in terms* to his own cotton, and expressly excludes any claim for the 136 bales now in controversy. The object of this brief and its effect were to explain to the court and account for all the cotton which was taken out of his possession in Savannah; whereas the lawyer's brief of Denver and Peck was confined to the proof of his ownership in a certain amount of cotton which was taken out of his possession in Savannah, and makes no reference whatever to the unimportant and irrelevant questions connected with other cotton than that for which they were seeking to recover.

Mr. Lamar begins by the statement that "it is proven that "3,553 bales of cotton were *taken from his possession* from the "warehouses known as 'Lamar's Press Warehouses' on the "eastern wharves of the city." It is to be noted that this *one lot* is more cotton, by 278 bales, than he *claimed in his petition as his own*, or than his counsel in their brief claimed in their demand, or than was awarded to him in the judgment. So that in this one item, even if all his cotton for which he recovered came out of that one warehouse, there were 278 bales more in there than he owned *or claimed to recover for.*

The next item is 943 bales, taken from various warehouses in Savannah, making a total of 4,496 bales taken out of Mr. Lamar's *possession* by the United States; and he then proceeded in the brief to account for this cotton and to distribute it among its appropriate owners.

After specifying in detail by a schedule (pp. 203 to 5) all the lots of cotton covered by these two gross sums, and in addition 82 bales covered by items numbers 1 and 2, which *were not embraced* in the 3,553 and 942 bales, he comes down to lot number 26, and says (p. 205):

"No. 26, 136 bales uplands (E T A or E T Y 69, X Y Z 67), "*received and advanced upon by C. A. L. Lamar for a person in* "*Virginia*, and were rebagged and compressed for the OWNER. "The OWNER made inquiry for them since the war, but when in- "formed of their being taken by the United States declined to "pay the advances made upon them; 136 uplands."

And by way of a note on the same subject he added:

"136, "No. 26; This parcel of 136 bales were received and "the *freight paid by Charles A. L. Lamar, who advanced money* "*upon them.* They were taken from the press warehouses and "from *my possession, and constituted a part of the* 3,553 *bales.*"

This is the cotton claimed by the appellee. There is no evidence in the case whatever, except this statement in Mr. Lamar's brief, that that cotton was ever in his warehouse at all, or that it ever went into the possession either of C. A. L. Lamar or of himself; but, for the purposes of this case, I accept Mr. Lamar's brief as a statement that that cotton was there. Mr. Lamar does not say that it belonged to any person who now claims it. He states exactly what he understood to be its condition, and its *ownership.* He says it was received and advanced upon by Charles A. L. Lamar for "*a person in Virginia,*" and "rebagged and compressed for the OWNER. The "OWNER made inquiry for them since the war, but when in- "formed of their being taken by the United States declined to "pay the advances made upon them."

Now, Mr. Lamar had sworn in his petition that he was the *owner* of all he claimed. He had *proved* that he was the *owner* of all; and then he came in with a brief accounting for several hundred bales more than he claimed to own, and under that account he specified these bales, and said they were *owned* by a gentleman in Virginia; and this statement is made the foundation of a claim against him, that he had recovered for them from the United States, and has the money in his possession so recovered.

The nearest approach to a claim by Mr. Lamar to recover on account of these 136 bales is in the 6th paragraph of the *erased brief* of Mr. Lamar, in which he specified "cotton ad- "vanced upon by his son, and for expenses incurred thereon "by him," which may indicate the 136 bales afterwards particularly specified. But even if this had not been stricken out before it was submitted; and if it could have been considered by the court under the petition itself, which did not claim it, or under the law which does not allow a stranger to collect for another's debt, as it could not lawfully have been; yet it was

disclaimed along with a great number of other items in the same brief, many of which specified Mr. Lamar's own cotton, when Mr. Lamar finally presented his claim (p. 206), for 3,274 (5) bales, the amount set forth in his petition, as "taken from him in Savannah," and disclaimed 616 bales specified in that brief.

It is to be observed that in the "recapitulation of cotton" in that brief (p. 206), every bale of the 4,578 is Savannah cotton, and proved by references to have been seized and shipped in Savannah, and that the 136 bales in question "consti- "tuted a part of the 3,553 bales" (p. 265), and yet Mr. Lamar rejected 688 and 616 as not being his, and limited himself to 3,274 (5) for which he had judgment. The shadow, therefore, of a claim by him to the 136 bales cast by the erased paragraph is dispelled by the actual claim made.

Strange as it may appear, that paper was urged upon the court as evidence that Mr. Lamar had recovered for that 136 bales in the capacity of partner of C. A. L. Lamar; and the court so found.

Fourth Issue.

The bill of complaint alleges (p. 3, § XIV.) "that since the "death of said G. B. Lamar said company has, *by a proper and* "*full assignment*, transferred and delivered to your orator, *for* "*value*, all and singular its title, right and interest in and to "the said 136 bales of cotton."

This is denied by the answer, and is in issue.

When the complainant undertook to sustain that allegation against the denial of the answer, Mr. Joseph B. Stewart, who appears to have been the instigator of this suit, and a speculator in it, offered himself as a witness (p. 36), and swore that he had had a proper assignment from that company, but had mislaid it, and he said: "I recollect the "contents and character of the paper, and which *I, in part*, "*worded*, and know that it was a general and absolute as- "signment of all the assigner, to wit, the Richmond Import- "ing and Exporting Company's right, title and interest in "and to the proceeds of the said 136 bales of cotton in-

" volved in the suit, and all and singular the rights of action " therefor."

Of course, this was objected to, and the complainant was under the necessity of producing the paper whose effect Mr. Stewart had sworn to, which he did, page 42 and 43, when Samuel J. Harrison was asked and answered the following questions (p. 42) Q. 6, 7 and 8:

" Cross-Q. 6. Did or did not said company on said 3d day " of March, 1879, assign to Charles F. McCay, the plaintiff " herein, all its right, title and interest in and to the 69 " bales of cotton involved in this suit, marked 'E. T. Y.,' or " 'E. T. A.,' and 67 bales marked 'X. Y. Z.,' in all, 136 " bales?

" (Objected to as leading and incompetent.)

" A. Yes.

" Cross-Q. 7. Was said assignment in writing, and if yea, " will you please look at the paper now shown you, a copy of " which is made part of this question, marked 'S. J. H. No. 1,' " and state whether or not the same is the assignment so " made by said company?

" (Same objection.)

" A. It is.

" Q. 8. Please state what, if any, object or purpose was in- " tended other than such as is apparent on the face of said " paper, as to why your company made and executed the " assignment of said cotton to the complainant in this suit?

" (Same objection.)

" A. *To wind up the affairs of the company.*"

After having sworn to this, then " counsel for complainant " offers in evidence the assignment from the Importing and " Exporting Company of Richmond, in the State of Virginia, " to Charles F. McCay, dated March 3, 1879, and marked " 'Complainant's Exhibit S. J. H., No. 1.'"

" Counsel for the defendant objects to the admission of the " assignment in evidence, because there is no legal proof of its " due execution by the Importing and Exporting Company of

"Richmond, the paper purporting to have been executed un-
"der the seal of the company."

The witness having been subjected to cross-examination, Mr. Stewart tried again to prove his assignment. This last attempt appears on page 48.

"Redirect-Q. 45. Please look again at the paper or assign-
"ment made part of your testimony in this cause, and marked
"'S. J. H. No. 1,' and especially to the signatures attached
"thereto, and state whether or not *they are the proper signatures*
"*of said parties within your knowledge*?

"(Ojected to as not competent proof of the execution of
"that paper.)

"A. The signatures of my own, as President and as director,
"were both written by me; those of Thomas W. McCauce,
"Andrew L. Ellet, and J. L. Apperson are, in my opinion,
"genuine; I have often seen them write."

And there the complainant stopped, and made no further attempt to give legal proof of the assignment.

The paper purported to have been executed under seal, by the president of the company, in the presence of Russell A. Hill, 7 Exchange Court, New York, subscribing witness as to the signature of the company, and Harrison, director; and by T. D. Dunlop as to other directors. The subscribing witnesses were not offered as witnesses, and no attempt was made to account for their absence. On the contrary, on cross-examination of the so-called president of this company (p. 45), it appears that Russell A. Hill still resided in New York, as he did when he signed his name as a subscribing witness, at 7 Exchange Court, New York.

The complainant, therefore, failed to prove the due execution of the deed, and the answer is made good on that issue;

Fifth Issue.

The bill of complaint alleges, paragraph III, that one Hambleton, as an agent of the Richmond Importing and Exporting

Company, consigned a special lot "of 244 bales" to Charles A. L. Lamar; and in paragraph VI, "that among other portions of "said 244 bales of cotton so held by said Gazaway B. Lamar, *as* "*the legal representative of said Charles A. L. Lamar*, was a lot "of 69 bales marked E, T, A, or E, T, Y, and another lot of "67 bales marked X, Y, Z, making a total of 136 bales," for which the bill alleges Gazaway B. Lamar recovered in the Court of Claims the sum of $23,844.88. The answer denies this allegation; and the complainant proceeded to prove the fact as well as he was able. The only witness who knows anything about it is I. Edward Hambleton (p. 29), who swore that he had received from Charles F. McCay, who acted as purchasing agent of the Richmond Importing and Exporting Company, between the years 1861 and 1865, between *five and six hundred bales of cotton*, which were shipped to C. A. L. Lamar, of Savannah, Georgia, "*for compressing* "and to be held by said Lamar subject to the order" of the witness; and the witness then says that he received from Lamar all of said cotton, except 244 bales. No marks for this cotton were given, although the purchaser of the cotton for the Company (p. 25, q. 16) says that the cotton was "bought always "by its marks;" and this is the entire testimony on the subject of the *ownership* of the cotton in the hands of C. A. L. Lamar; which, if accepted as true in all particulars, amounts to this, that Charles A. L. Lamar, in his life time, had received 244 bales of cotton, the property of the Richmond Importing and Exporting Company "*for compressing.*" The object of *compressing* the cotton was, that it might be shipped in a blockade runner.

The next piece of evidence is a letter from Mr. G. B. Lamar in reply to one written by Harrison, Goddin & Apperson, of Richmond, Virginia, dated September 24th, 1865, in these words (p. 15):

"SAVANNAH, Sep. 24, 1865.

"Messrs. HARRISON, GODDIN & APPERSON,
"Richmond:

"Gentlemen,—Mr. Terrell showed me your letter enquiring "about some cotton held by my late son Charles, for Mr. "Hambleton, agent, &c.

"It was marked X, Y, Z, and E, T, A; the exact number of "bales I do not know, but it was taken and shipped to New "York by the military of the United States in January last. "From reports heard recently I am led to believe that some "persons are combined to represent that it is theirs; and from "the names mentioned, in connection with it, I think they may "succeed in their claim, however unjust and unfounded. I am "of opinion that there will be no legal bar to the recovery of "this cotton. The President himself told me it would all be "paid for, and one of the assistants of the Treasury recently "told me that they had released the cotton of the Chicora "Company of Charleston, and, taking that as an indication, "there would seem to be no doubt as to the course of that de-"partment.

"There will be a bill for storage and compressing that cotton, "which Mr. Hambleton will please provide for; the latter "item I am trying to get from the United States agent who "took the cotton. He admitted in a degree the claim, but "objected to the rate of charge. I desired him to fix the rate, "and he then repudiated the claim and signed his objection "on the bill, and soon after they seized all my papers, and "that bill among them, and it is only within the past week "that I received them again. I sent that on to New York to "Mr. Draper for settlement, and when I hear from him I will "write again. Please show this to Mr. Hambleton, and say to "him that I will give him the name of the official who is trying "*to get his cotton*, when I get a more reliable evidence of the "fact.

"Yours respectfully,

"G. B. LAMAR."

This letter shows that Mr. Lamar *supposed* that some bales marked "X, Y, Z," and "E, T, A," were the cotton inquired about by Harrison, Goddin & Apperson. Their letter is not in evidence, but it is apparent from the reply that Mr. Hambleton was claiming the cotton as his. Whether this was any part of the cotton of the Richmond Importing and Exporting Company, Mr. Lamar himself did not know; and it is apparent from what happened afterwards that that company made no claim to it until a long time afterwards, although Harrison was the president of the company.

The next item upon which complainants relied to identify the cotton is in the third petition, which was filed by Hughes, Denver & Peck (p. 56), *and withdrawn*, in which it is said that there were "136 bales on account of ——— Holland, of Rich-"mond, Virginia." The complainants say that Holland means the Richmond Importing and Exporting Company, and that the petition meant Hambleton for Holland.

The next item of proof is Mr. Lamar's additional brief (p. 203), in which Mr. Lamar says that these 136 bales "were received and advanced upon by C. A. L. Lamar "for *a person* in Virginia." And this is the entire evidence on the subject. If the estate of Charles A. L. Lamar is to be charged, there is not a word of legal evidence that this cotton was ever any part of the 244 bales. If a supposed partnership, which did not exist, between G. B. Lamar and Charles A. L. Lamar, is to be charged, then Mr. Lamar's letter is an admission that these 136 bales came from Hambleton, and were claimed *by him as his property*, as the writer understood. This letter, however, must be taken in connection with another one written by Mr. G. B. Lamar on the 27th day of April, 1874. At that time J. L. Apperson claimed the cotton to be his, and Mr. Lamar wrote him this letter (p. 21):

"New York, Ap'l 27, 1874.

"J. L. Apperson, Esq.,

"Dr. Sir:—I have yrs 25th inst. in regard to the cotton I "advertised for, and I shall be very glad if you can prove it to "be yours.

"But you will excuse me for saying that the *proof must be* "*explicit and ample*, as I am acting for my son's estate, with "four daughters and an executrix to satisfy as well as for my-"self. You can refer also to the advances made upon it by "my son. Respy, &c.,

G. B. Lamar."

The "*explicit and ample*" *proof* which Mr. Lamar called for was not forthcoming, but another letter was written by Mr. Lamar, June 2, 1874 (p. 21):

"No. 46 West 21st Street,
"New York, June 2, 1874.

"J. L. Apperson, Esq.:

"Dear Sir,—I have y'rs 28th inst., with the copy of my "letter to your firm of 24th Sept., 1865, which has some direct "reference to the case. Why is it that your Mr. Hambleton "residing in Baltimore, so near to you, cannot be heard from? "Of course, you will see that if the cotton in question *be-* "*longed to your firm*, that the other parties must be consulted "also.

"It is desirable that whatever is done should be done "promptly, as *I am only a stakeholder, and must account* "*soon to the executrix of my son's estate.*

"Res'py, &c.,

"G. B. Lamar."

From which it appears that Apperson was claiming the cotton for his "*firm*," which was composed of Harrison, Goddin & Apperson, as Mr. Lamar's letter of September 24, 1865, shows. No proof was forthcoming on the subject of that claim, and so the matter stood *for three years*, when Harrison and Apperson appeared in the character of directors of the Richmond Importing and Exporting Company, in the deed of assignment to McCay, March 3, 1877.

The complainant fails to support this issue.

Mr. G. B. Lamar's Advertisement.

After the recovery in the Court of Claims Mr. Lamar published the following advertisement (p. 20):

"Information Wanted."

"Sometime in the year 1864 some persons in Richmond, or "its vicinity, placed Two Parcels of Cotton in the possession "of my son, Charles A. L. Lamar, of Savannah, Georgia, de- "ceased, which was stored in Lamar's Warehouse, and upon "which some advances were made, besides the storage, com- "pression, cartage, etc.

"The cotton was forcibly and fraudulently taken by the "military of the United States nine years ago, and converted "without any legal process by libel or otherwise. *I have to-* "*day received payment for the same from the United States* "*Treasury* (without any interest), and the rightful owner is re- "quested to come forward, *pay the advances,* the expenses of "the collection, *prove his ownership, and receive the balance* "*due.*

"G. B. LAMAR,

"No. 46 West 21st street, New York.'

It is manifest, beyond the possibility of doubt, that Mr. Lamar was mistaken when he published this advertisement, in supposing that he ever had collected for any cotton except that of which he was the absolute owner. What led him to make that mistake, so far as I can see, is, first, that in his will, which was made on the 28th day of September, 1872, and long before the recovery, he supposed that it was competent for him and his executors to prosecute the Government in the Court of Claims for a large amount of cotton belonging to others than himself. He says in that will (p. 17, item 7):

"It is my further will and desire, and I hereby direct my "executors to press my claims upon the Government of the "United States for payment of the following cotton, which are "now before the Court of Claims, and also before the Com- "mitte on Claims of the Congress of the United States"

And then followed these items:

"32 bales Sea Island, *belonging to the estate of my son,* C. A. "L. Lamar;" and also "for 1,018 bales cotton *belonging to the* "*Importing and Exporting Company,* of which I am Presi- "dent;" and also for "688 *bales upland cotton belonging to the* "*same company, which were taken from Savannah by Colonel* "*Ransom, on which Henry Lafore, Esq., of Liverpool, has a lien* "*for about thirty thousand pounds;*" and also "136 *bales of* "*cotton belonging to a gentlemen in Richmond, Virginia, on which* "*C. A. L. Lamar made advances.*"

That will was drawn September 28, 1872 (p. 20), and before the final petition in the Court of Claims, upon which the re-

covery was had, which was May 26, 1873 (p. 58). It shows that Mr. Lamar at that time *thought* he could sue in the Court of Claims for all these different accounts; but he found out his mistake in 1873 when he filed his true petition. In his additional brief, however, he recurred to one of these claims—that of Henry Lafore; but he carefully distinguished his claims from those of the others, and only mentioned Lafore's claim as a fact in the case, and did not mention any other person as having a claim, although he enumerated a large amount of cotton that had been taken from his possession (p. 206).

The lawyers knew just what could be recovered when they made their brief; and as it is now apparent the judgment was given, and the money paid, upon the specific claim for 3,275 bales of cotton, the absolute property of Mr. Lamar.

Mr. Lamar also made an entry in his books, under the title of "Suspense account" (p. 12), in which the proceeds of these 136 bales were supposed to be held for an unknown owner.

The chronology sheds some light on the confusion in which Mr. Lamar was at this time. Mr. Lamar's personal brief was submitted to the Court of Claims, April 22, 1873 (p. 203); the judgment was entered June 2, 1873. What happened to the judgment does not appear on this record; but in fact, it was appealed by the United States to this court, and the appeal was afterwards dismissed, as will appear on the minutes. This occupied nearly a year, so that the money was not paid till April 17, 1874, a year after the argument in the Court of Claims. The day the money was paid, Mr. Lamar made the "*suspense*" entry; and two days after, April 19th, the advertisement was published (see newspaper check mark, Ap. 19, &c., p. 21). The advertisement, however, was written on the day of the payment, as it says: "I have *to-day* received payment," &c.

Mr. Lamar's state of mind on the subject may easily be seen from these facts. He originally thought that he could collect for all the cotton "*taken out of his possession*," and in making his will, he directed his executors on that theory. The lawyers corrected this erroneous impression in the Court of Claims; but Mr. Lamar's brief irrelevantly alluded to these items of cotton; and then there was a judgment for a large sum of money, specifically stating, however, that *it was for Mr. Lamar's own cotton*. A year elapsed, in which an appeal was taken and

abandoned, during which time Mr. Lamar had been in great risk and distress; he had paid $25,000 to one lawyer to move for its dismissal, which the Attorney-General did not oppose, and so he got the money at last. The history of this part of the case is to be found in the record of Herbert *vs.* Butler (97 U. S., p. 319). When he got it, the old theory still was in his mind; and without looking into the record, on the very day the money was paid, he made the advertisement on which this suit is founded.

After the advertisement, as the letters show, Apperson & Harrison attempted to get this money for *their firm*, but without success; and so the case stood until this suit was contrived by McCay, the complainant, assisted by Joseph B. Stewart, and was begun August 26, 1879, *more than five years after* the advertisement. How the suit was contrived appears by the testimony of Harrison (pp. 43 to 49).

His story is that somebody, but he cannot remember who, brought him the paper purporting to be an assignment to McCay, and asked him to sign it (p. 31, p. 45).

He does not remember whether he prepared the paper or somebody else did; he does not know whose handwriting it is; he does not remember what was said to him by anybody which induced him to sign it; he does not remember where it was executed; he "thinks it was in the United States" (Q. 18) but is not sure; he swears he does not know that he was, when he was examined in New York, "within a thousand miles of the place where he signed it" (Q. 21); but he does know that the proceeds were "to enure to the company besides Mr. McCay" (Q. 40); he knows that he had not been in Richmond since about four years before he was a witness (Q. 10); and he knows that his place of business in New York is in the same building with that of Russell A. Hills, the subscribing witness, No. 17 Exchange Court (Q. 27). (See also p. 49.)

It appears, however, that this blockade running company, which became practically extinct at the end of the war, as of necessity they must have become, since their occupation was indefinitely suspended, never had a meeting since 1867 (p. 8), as proved by Hambleton, the agent of the company and one of its directors (p. 49, q. 65); so that it was impossible that this company could have made any legal assignment of this supposed claim, which did not accrue until the judgment in favor

of Mr. Lamar in 1874, six years after that company had had its last meeting. The testimony of Harrison is as shameless a piece of perjury as ever disgraced the records of any court; but it is the foundation and the only one one upon which the complainant rests his title.

Errors.

I.—In his decision, his Honor Judge Wheeler says: "Three "principal questions have been made in respect to the orator's "right of recovery. One is as to whether these 136 bales were "embraced in Lamar's recovery. Upon this question careful "examinations of the proofs lead to the conclusion that they "were. The proof of the proceedings in the Court of Claims "would alone, *leave the matter somewhat in doubt, perhaps, "too much so for a foundation for a recovery.* But while the "case was pending he *made his will*, that of which the defend-"ant is executor, containing these clauses: It is my further will "and desire, and I hereby direct my executors to press my "claims upon the Government of the United States for the "payment of the following cotton, which are now before the "Court of Claims; among other lots following was speci-"fied: 136 bales cotton belonging to a gentleman in Richmond "Virginia, on which C. Lamar made advances. When all the "collections for this private cotton are made, and the amount "placed to the credit of the several accounts, and interest "charged to each account for my advances, then a division "must be made of the net balance to the private account of "each."

"After the recovery he advertised in the *Richmond Enquirer* "for the owner of two parcels of cotton, and this lot was in two "parcels, stating, 'I have to-day received payment for the same "'from the United States Treasury,' and requesting the owner "to come forward, pay advances and expenses, prove owner-"ship, and receive the balance due. The proofs also show "that he entered this cotton in his books as belonging to an "owner unknown, but advertised for in Richmond, charged it "there to the United States at $23,844.88, and credited to the "United States that sum as received for it. This clearly shows

"that his claim embraced this cotton, that he understood that "he recovered for it, and, altogether, the proof is quite satis- "factory that he did recover for it."

THIS IS THE FIRST ERROR.

There is no doubt of what the proceedings in the "Court of Claims show."

They do *not* "leave the matter somewhat in doubt."

Mr. Lamar's will, written while his suit was pending, is not competent evidence of what that suit was for; nor can the record of the Court of Claims be corrected by that will. More especially cannot that record be corrected by a will which was written a *year before the declaration was filed upon which the judgment was obtained.* If it can, then any one of the other persons mentioned in that will as owning cotton for which Mr. Lamar says he was prosecuting a claim, might recover against his estate for the same reason. And especially could Henry Lafore recover against him, because, not only does he mention his claim in the will, but actually set it forth in his brief as a claim, which is more than he did for these 136 bales of cotton.

Mr. Lamar's advertisement is not competent evidence to correct the record of the Court of Claims. He was simply mistaken. If he had continued to live, *possibly* he might have been whedled out of that money by the Appersons and McCay. Most *probably* he would not have been; because when the proof came to be offered and examined, he would have corrected his mistake, and never paid it.

But whatever he believed on the subject, the executor of his estate, who is the trustee for his creditors and heirs, is not bound by any impressions he had on the subject. He must know the truth before he can pay the demand; and while Mr. Lamar's statement or belief in his lifetime is competent evidence, it is not conclusive—while the record of the Court of Claims is conclusive; and in this case the proof is "quite satisfactory that Mr. Lamar did *not* recover for this cotton," instead of being "quite satisfactory that he did recover" it, as the court finds.

Mr. Lamar could not have recovered for the 136 bales in the Court of Claims, if he would. In that court, at any rate, the *allegata* and *probata* must agree, whatever may be the law elsewhere. The statute, March 3, 1863, is in these words:

"Any person *claiming* to have been the *owner* of any such "abandoned or captured property, may at any time within "two years after the suppression of the rebellion, *prefer his* "*claim to the proceeds thereof* in the Court of Claims, and on "*proof* to the satisfaction of the court *of his ownership of said* "*property, of his right to the proceeds thereof*, and that he has "never given any aid or comfort to the present rebellion, re-"ceive the residue of said proceeds."

Three conditions precedent must exist:

1. The claimant must be the "*owner.*"

2. He must "*prefer his claim* to the proceeds thereof."

3. He must offer "*proof of his ownership.*"

No one of these conditions existed. Mr. Lamar was not only *not* the "owner," but he expressly said to the court in his brief that the "owner" "was a person in Virginia" (fol. 270).

He did not "prefer his claim to the proceeds thereof," as his petition shows.

And he offered no "*proof of his ownership.*" Nor, indeed, *did he offer any proof of any kind whatever* in respect to these 136 bales. The proofs which he offered are all summed up in the brief of the solicitors, and not a word is said about this cotton. It is impossible *in law*, therefore, that he should have recovered for it.

But yet we have this remarkable fact—that in a suit in equity in the Circuit Court of the United States, in which the *allegata* and *probata* do not agree, it is decided that another court of the United States had rendered a judgment against the Government in a suit in which their were neither *allegata* nor *probata* in respect to the cotton said to have been recovered. And this in face of the fact that the judgment itself is that the "CLAIMANT OWNED" the property for which he recovered; and the evidence was that he not only did "OWN" it, but owned more, which he voluntarily disclaimed.

This seems to be error.

II.—The court says again (p. 208): "The proof, including "correspondence, shows quite clearly that this cotton was pur- "chased and forwarded to C. A. Lamar by a Mr. Hambleton of "Richmond, as agent for the Richmond Importing and Ex- "porting Company, and was owned by that company."

The proof does not identify this cotton as a part of 244 bales. It leaves the question entirely open. No man who knew the fact has testified on the subject, and Mr. Lamar's letter does not identify it with the 244 bales.

Indeed, Mr. Lamar's advertisement, relied upon to identify the cotton, shows it to be another lot. The testimony of Hambleton is that the 244 bales were the residue of five or six hundred bales consigned to C. A. L. Lamar. The advertisement specifies it as "TWO PARCELS OF COTTON;" and his letters on the same subject gave the marks and numbers of each of these two parcels. So that the descriptions are quite different and inconsistent.

III.—The court omitted in the opinion to quote the original act of incorporation (p. 34), in which the object was specifically stated to be "trading from the ports of the Confederate States of America"—otherwise blockade-running; and having omitted that the court says: "The corporation appears to have been "*lawful enough in itself.* The business *it was chartered for might be lawful or unlawful.*"

This, certainly, is not the view which the Supreme Court has taken of the blockade-running corporations. They have not been held to be "lawful corporations" pursuing a lawful business. In the case of Radick *vs.* Hutchins, 5 Otto, 213, this court said:

"At this time, also, it was the declared policy of the United "States to prevent all intercourse between the insurgent States "and the loyal States, and also between them and the foreign "countries, and thus to cut off from the insurgents the means "of prolonging the existing war. In pursuance of this policy "the ports and coasts of those States were blockaded, commerce "with their inhabitants was prohibited, except especially au- "thorized under regulations of the Treasury Department, and "property which eluded the blockade was subject to seizure "and condemnation. The attention of the authorities was

" specially directed to prevent the exportation of cotton, upon " which the insurgents chiefly relied to obtain the means for " the continuance of their struggle."

In the case of the United States *vs.* Insurance Companies (22 Wallace, p. 100), this Court said that corporations created by the States or the Confederacy for purposes which were not hostile to the Union, or the authority of the general Government, and which were not in conflict with the Constitution of the United States, or of the States, have the same validity as if they had been enactments of legitimate legislatures, " but that corporations organized for the purpose of violating the laws of the United States and assisting the Confederate Government had no standing whatever in the Courts of the United States." And to the same effect are the following cases :

" Sprott *vs.* U. S., 20 Walll., 459.
" Demare *vs.* U. S., 3 Otto, 605.
" Young *vs.* U. S., 7 Otto, 39.
" Haycraft *vs.* U. S., 22 Wall., 81."

In this case not only was this corporation created for the express purpose of running the blockade, but that was the business, and the only business, which it did.

See testimony of Hambleton, pp. 31, 32, 38, 39, and see also charter pp. 34, 35.

The 244 bales of cotton sent to C. A. L. Lamar, were, as the proof shows, to be " compressed " in Charles Lamar's cotton press, for the purpose, of course, of running the blockade.

The company carried also in its blockade running vessels materials for the Confederate Government (p. 32 q. 18).

It was certainly, therefore, an error to say that this was a lawful corporation, and could recover in its own name in the Courts of the United States.

As a simple test, suppose a petition to have been filed by the Richmond Importing and Exporting Company in the Court of Claims, setting forth the facts as they appear in this record, namely :

FIRST.—It was organized " for the purpose of owning, navi- " gating and freighting ships and other vessels engaged in

" foreign and domestic commerce trading from the ports of " the Confederate States of America."

SECOND.—It bought some cotton for the purpose of carrying on that trade.

THIRD.—It consigned that cotton to C. A. L. Lamar, in Savannah, to be " compressed," preparatory to its shipment abroad.

FOURTH.—In that condition it was seized by the United States officers and sold—ending with a prayer to be reimbursed.

It is not necessary to follow it any further than that statement; and that one statement carries with it another consequence, which is that Mr. Lamar could not if he would have collected any money for the cotton of that company in the Court of Claims. And it cannot be presumed that the court rendered an illegal judgment in Mr. Lamar's favor when he was there with a legal claim for all that he did recover and more. The utmost that he could have recovered in the court in a case like this is whatever interest he had in the cotton as a creditor for advances, or a factor or broker; but there is no pretence either that he ever held that relation to the cotton or that he ever claimed to hold it; and there is not a word of proof before the Court of Claims that he did hold it.

IV.—The court says (p. 209): " The other principal ques- " tion is whether the claim is so assigned to the orator that he " can recover upon it in his own name. It is not questioned " but that an asignee of a mere right of action or recovery " may maintain a suit in equity upon it in his own name; but " it is strenuously argued that no real and valid assignment of " this claim is shown. That company had a valid claim against " Mr. Lamar, the testator. He held these avails of the prop- " erty of the company in trust for the company. The com- " pany had a right to charge him as its trustee of the funds, " whether he was willing or not. He seems to have been " willing, however, and to have charged himself so far as he " could. The disposition of the cotton was directly within the " corporate powers of the company, and the disposition of the " avails of the cotton was impliedly within the same scope.

" The charter provided that: 'The affairs of the company
" 'shall be managed by a President and Board of Directors,
" '*whose term of office*, and their number, shall be determined
" 'and elected by the stockholders, and the said Board of
" 'Directors shall possess all the corporate powers of the
" 'company.' The proof shows that no meeting of the com-
" pany had been held, for any purpose, for many years,
" and that very little or no corporate business had been
" transacted within a number of years before the assignment.
" *It does not show what term of office was determined upon*
" *for the directors. It does show by the testimony of the*
" *officers who the directors were at the time*, which was com-
" petent for that purpose, especially as the proof also shows
" that the records were destroyed. One of them died. The
" president and all the others joined in the execution of the as-
"signment. This seems to be sufficient to transfer the title to
" the claim to the orator."

The first error in this part of the decision is, that it permits a deed, *executed in the presence of subscribing witnesses*, to be proved by calling one of the grantors to swear to his signature and to those of the others who signed in the presence of a subscribing witness. The court takes no notice of that objection, which was formally made (p. 48, q. 45), and formally presented to the consideration of the court, and supported by authorities, such as

Clark *v.* Courtney, 5 Peters, 318.
Cook *v.* Woodson, 5 Cranch, 13.

If Hills, who was in New York, and J. D. Dunlop had been called, they could have proved when, where, and how this deed was made, which Harrison swore he could not do; and so they were prudently withheld.

The *second error* is in assuming that a corporation whose affairs "shall be managed by a president and *board of di-*
" *rectors*," can execute a legal assignment of its property otherwise than by a resolution of the board of directors empowering its officer to affix its seal.

The court finds, as the fact is, that "*no meeting of the*
"*company had been held for any purpose for many*

years," and, therefore, there was no lawful authority in the president to execute the deed in question. The rights of the stockholders cannot be taken away from them by any act done otherwise than in the manner prescribed by law for that purpose.

The court, however, says that the " President and all the " others (directors) joined in the execution of the assignment," which " seems to be sufficient." If such a form can be good, of course the signatures must be proved by the subscribing witnesses, which was not done; and moreover it must appear that the persons so calling themselves, were directors *at the time* they signed the agreement. There is no presumption of law in their favor, as there is in favor of a deed under the *acknowledged seal* of the company, executed in due form. In this case the fact did *not appear* that the persons signing the paper were *directors when they signed it.* The only testimony on the subject is this (p. 51):

" Q. 2. Did or did not the stockholders of said company " ever fix the number of which its Board of Directors should " consist ?

" (Same objection.)

" A. It did.

" Q. 3. Who were they, to the best of your recollection, and " what was the number ?

" (Same objection.)

" A. Thomas W. McCann, James L. Apperson, Andrew L. " Elliott, John D. Harvey and myself."

This proof, if competent, is that the stockholders originally chose these directors; but there was no proof that they still were directors. By the charter, as the court says, the " term of office" of the directors had to be fixed by the stockholders; and it does not appear what that term was. Probably it was the usual term of one year, which, of course, expired many years ago.

This issue, therefore, is not sustained.

V.—The court also says:

" The bill alleges that Gazaway B. Lamar received this cot- " ton as executor of C. A. Lamar, and held it as such when it " was seized. The answer denies that he was the executor

" of C. A. Lamar, or held it as such. The proof does not sup-
" port the bill, but sustains the answer on this point. He ap-
" pears to have received it as *surviving partner*."

There is no such evidence in the case. The statements of Mr. Lamar about it, if they have any effect whatever, are that *his son* alone was interested in the 136 bales of cotton. He makes no statement whatever that he had any interest, as partner or otherwise; and in point of fact he was not the partner of his son, and there is not a word of testimony in the case to show that he was. He and his son had joint interests in certain ventures in cotton, fully stated in the record, and so far they were partners, and no further.

And, moreover, when he was charged as executor, a decree cannot be passed against him as partner, because he was entitled to answer that allegation, if it had been made, and to show that it was not true; or if true, then to show exactly his rights as partner.

This court said, in Boone *v.* Childs, 10 Pet., 177: " A party
" is not allowed to state one case in a bill or answer, and make
" out a different one by proof. The *allegata* and *probata* must
" agree. The latter must support the former." Judge Wheeler, however, allows an executor of a deceased man to be brought into court on the charge that his testator was the administrator of another deceased man, and liable for assets of the first decedent which come into his hands as such administrator, and, when that charge is denied successfully, to give evidence tending to prove that at any rate the testator might have been a partner of the decedent, and as such might have come into possession of the property in question, and, upon this evidence, to hold the estate of the testator liable as the estate of a partner. It seems difficult to imagine a broader variance between the *allegata* and *probata*. If such were the law, estates in the hands of executors would not be very safe from depredations. A false issue in pleading, and then proof of something else, would secure a judgment.

VI.—The court says: " The orator does not seek to recover
" through C. A. L. Lamar, nor upon any right of his, nor
" upon any *obligation* incurred by him."

This is a manifest error. The bill charges expressly that Gazaway B. Lamar is the administrator of C. A. L. Lamar, and as such received this money, and that C. A. L. Lamar received the said cotton "from said Hambleton *as the property* "*and estate of said company*, and ever thereafter *held the same* "*for its use and benefit.*"

The "*obligation*" is laid in that allegation, and is transferred by another allegation to G. B. Lamar, as his administrator.

The error of this statement became very manifest when in the decree the money consequences were stated, and then the court says that the "orator appears to be entitled to a "decree for the payment of these avails. The avails are the "amount received for this cotton, after DEDUCTING THE EX-"PENSES BELONGING TO IT, and for the recovery of it."

The "expenses belonging to it" are separate from the expense of the recovery, which was stipulated for, and a part of them are found in the account purporting to be an account of C. A. L. Lamar from the Richmond Importing and Exporting Company (pp. 26, 26), which account was put in by the complainant for the purpose of connecting C. A. L. Lamar with the transaction, and so laying the necessary foundation for relief in a court of equity; and the complainants *very kindly allowed* the amount of that account as against the recovery, when it was converted into gold at the rates proved.

Of course, Mr. Lamar had nothing to do with it, as he was not the administrator of his son's estate; but the complainant forced it upon this defendant, by a voluntary allowance of it, for the purpose of giving color to his claim for the balance.

See testimony, pp. 25 and 27.

The XVIIth paragraph of the Bill (page 4) tenders the amount due to Charles A. L. Lamar, and calls for his books, in order that it may be ascertained; and one ground of jurisdiction is the discovery of Charles A. L. Lamar's books, whereby the true balance of the account between the company and him might be ascertained.

The opinion, which puts the complainants right upon the ground of partnership, ends by ordering an allowance of the

expenses of C. A. L. Lamar to be made in accordance with the theory of the bill itself, which makes G. B. Lamar the executor of his son.

The court disposes of the objection that the bill charges that the defendant's testator was an executor when the fact is not so, by saying that the charge "*is mere inducement.* The ma- "terial facts are that the cotton belonged to the Richmond Im- "porting and Exporting Company, and that *the testator received* "*the avails of it.*" This at once brushes aside the entire pleadings, and substitutes for a bill in equity for discovery and account, a common law action of *trover;* and if the findings of fact were true, it would be exactly a case of trover—that is, Mr. Lamar found in his warehouse some cotton, and when it was taken away from him, he recovered for it, and kept the money into which the cotton was converted. Surely such a right of action as that cannot be tried in such a suit as this.

The facts, however, are not as assumed.

The expression in the decision that "the bill ought not to "fail when the *material allegations are proved,*" begs the whole question. If a bill had been filed, alleging only what the judge calls the material facts, viz., "that the cotton belonged "to the Richmond Importing and Exporting Company, and "that the testator received the avails of it," it would have been bad on demurrer; and it was made good only by the "material allegation" that the testator was the administrator of C. A. L. Lamar, and as such collected this money. An action of trover cannot be tried by a bill in equity.

The judgment should be reversed.

EDW. N. DICKERSON,
Counsel for Appellant.

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SUPREME COURT U.S.
FILED
OCT 30 1883
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 882.

G. DE ROSSET LAMAR, EXECUTOR OF GAZAWAY B. LAMAR, DECEASED, APPELLANT,

vs.

CHARLES F. McCAY.

REJOINDER TO BRIEFS OF SHELLABARGER AND WILSON, J. K. HERBERT AND CHARLES F. McCAY.

FILED

E. N. DICKERSON,
Of Counsel.

Evening Post Job Printing Office, N. Y.

U. S. Supreme Court,

OCTOBER TERM, 1883.

G. DeRosset Lamar, as Executor, &c.,
Appellant,

vs.

Charles F. McCay,
Appellee.

Rejoinder to Briefs of Shellabarger & Wilson, J. K. Herbert, and Chas. F. McCay.

Three arguments have been filed by the appellees in this case. One by Shellabarger & Wilson, one by J. K. Herbert, and one by the appellee himself, which I will consider in their order.

Hoping to be benefited in my "questionable manners," and to avoid any unnecessary "indications of the feebleness of "my cause," against which the "magisterial" lecture of Messrs. Shellabarger & Wilson, on the 26th page of their brief, warn me, I take it up in the order in which it is given.

One objection to the recovery under the bill filed was that it charged Gazaway B. Lamar as administrator of his son

when he was not; and that therefore no decree could be founded upon that bill upon any other theory. The court decided that, as matter of fact, Gazaway B. Lamar "appears "to have received it (the cotton) as *surviving partner*" (p. 210); but it also decided that, notwithstanding the statement that Gazaway B. Lamar received it as surviving partner, it was wholly immaterial how he got it, and that "the material facts "are that the cotton belonged to the Richmond Importing and "Exporting Company, and that the testator received the avails "of it, and that the orator has succeeded to the right of the "company to the avails."

The court did not put the right to recover in equity, upon the ground that Gazaway B. Lamar was a "trustee and a "fiduciary," and that as such, a court of equity had jurisdiction over his acts; but upon the ground either that he was a *surviving partner*, or that it was entirely immaterial in what capacity he received the cotton.

Messrs. Shellabarger & Wilson, however, have discovered a new ground not found by the court, which is, that Gazaway B. Lamar was "the agent and *fiduciary of said company*," and as such, a court of equity has jurisdiction over his acts. The first five pages of their brief are devoted to elaborating this idea; but they accidendtly omit to notice that the answer denies that relationship entirely, which was in issue, and no proof whatever was offered establishing the allegation of the bill in that respect. The language of the bill is in that loose, unlawyer like language, in which an ordinary warehouseman and cotton presser, to whom cotton was sent to be pressed and who misappropriates it, is charged as a "*fiduciary*" and a "*trustee.*" If that were so, a court of equity would have its hands full of fiduciary and trusts cases; for every bailee who steals or loses the property of the bailor, would present a case of trusteeship in a court of equity, and the person to whom the bailee sold the property of the bailor, would be a party in a court of equity to account for the profits of the transaction. This may be enough answer to the new invention of Messrs. Shellabarger & Wilson. The authorities cited by them are proper authorities in cases where *trustees* are chargeable in a court of equity, and where property "impressed with a trust" passes into the hands of successive holders who become, in the nature of the transaction, proper parties in a court of

equity. A cotton *press*, however, has never been recognized as an instrument for "impressing a resulting trust" into bales of cotton. Its legitimate use is to reduce the size of the bales so that they may be shipped advantageously.

This is an action of trover and conversion brought in a court of equity, according to Judge Wheeler and the counsel. The defendants have a constitutional right to a trial by jury on that question, of which they cannot be divested at the option of the complainant, who chooses to go into a court of equity and *say* that a warehouseman is a *trustee* in equity.

A very original view of the law of pleading is taken by these gentlemen, at the foot of page 9, in which they say: "But the "court refused to adopt this view for the conclusive reasons "stated on pages 160 and 161, that the *variance* was in a mat- "ter '*subordinate*'; that this was not of the '*gravamen*' (p. "160) of the bill; that the whole case was in the bill fully "stated, and the variance not material; *or if material*, should "have been *objected to by demurrer or answer*, and could not be "*now* made available." How the variance between the allegations of the bill and the proof could have been objected to by "demurrer" is somewhat difficult to perceive. The bill itself was not demurrable; but it was not true, and the answer denied its facts. No demurrer to the bill could have been framed if Mr. Lamar was the administrator of C. A. L. Lamar, and in that capacity, as the bill alleges, came into possession of this property, and there was an account between the claimant C. A. L. Lamar, which the bill also alleges, and there was a discovery to be made out of the books of C. A. L. Lamar, in the possession of his administrator. A court of equity had jurisdiction over that case; and even my knowledge of the falsity of the bill would not have justified a demurrer, or any other answer than that which was made.

2. Messrs. Shellabarger and Wilson say that "no partner- "ship accounts, or any other accounts as between said Charles "and his father, Gazaway, or *any other party*," were required by this bill.

The 17th paragraph of the bill (p. 4) calls for an accounting with Charles A. L. Lamar, whose books, papers, and accounts, are said to be in the possession of G. B. Lamar, his admintrator; and one of the first things done by the complainant was

to put in evidence what purported to be an account between Charles A. L. Lamar with the Richmond Importing and Exporting Company, whereby the balance claimed by that company was supposed to have been ascertained. Messrs. Shellabarger & Wilson, without taking that precaution which persons lecturing their professional brethern, as they do, for professional impropriety, should have exercised in making their brief, say in respect to this account, page 11 :

"To this end the *claimant, Lamar*, introduced the account "between Charler Lamar and the Richmond Company, which "is named in Mr. Dickerson's brief; and *for this purpose it* "*was introduced by the claimant as evidence in the Court of* "*Claims*" (p. 9).

I hope I shall not be again charged with bad manners when I say, in the mildest form that I am able to express it, that, *first*, Mr. Lamar did not introduce that account in this case; on the contrary, it was introduced by the appellee himself, as the record shows, C. A. Lamar never having seen it at all, as the appellee proved, much less Mr. Gazaway B. Lamar, who was no party to it, and had no occasion to see it; and *secondly*, that account was *never introduced into the Court of Claims by anybody*, so far as the record shows. Probably Messrs. Shellabarger & Wilson have some private information on the subject, which they think justifies them in making this statement; but usually that sort of private information is not introduced into the court as the basis for a judgment. Of course, I mistook the purpose of the complainant in introducing it, if Messrs. Shellabarger & Wilson are right in their statement, and they ought to know, *not* having been connected with the case until now; but I thought it was introduced to show that there was an account between these parties which needed to be settled in a court of equity, and I must apologize for my mistake, if it were one, not being able to see any other motive than that in the testimony. It does not yet strike me very forcibly that there was much point in introducing that account for the mere "purpose of showing that Charles A. Lamar and the Rich-"mond Company were *not strangers to each other*," which is what these gentlemen say was its purpose (p. 11). How an *acqaintanceship* between these parties gives a court of equity jurisdiction over Mr. G. B. Lamar's executor, does not seem

entirely clear; but probably there is some authority to that effect somewhere.

3. My point, that under the law nobody but the *owner* could recover in the Court of Claims, seems to have been misapprehended by Messrs. Shellabarger & Wilson. They say (p. 16), "We are now on the question what, under the law, *as admin-* "*istered in the Court of Claims*, may have been proved under "these petitions."

And on page 18 they say: "Hence, instead of its being true, "as Mr. Dickerson *so persistently and vehemently asserts, that un-* "*der the law of 12th of March*, 1863, *as understood and adminis-* "*tered in the Court of Claims in* 1873, Mr. Lamar could *not* "recover on such a title as he held *as a trustee and factor* in "these 136 bales, because he was not their "*owner*," and that "Mr. Lamar and his counsel *knew* this at the filing of their "last petition, the fact was exactly the reverse."

I have not looked at my brief to see whether I made any such assertion at all; but I feel so much confidence that I did not as to deny it without looking to the brief. I knew when I made that brief, that at one time the Court of Claims had held that a "factor" *having made advances on cotton, and having an interest in it*, could prove that fact and recover for the cotton, and that the Supreme Court had reversed that judgment, saying that at most he could only recover for his interest in it. What I intended to say, and think I did say, was, that *under the law* Mr. Lamar could not have recovered for this cotton; and the Supreme Court so decided. If the Court of Claims in this case had decided that Mr. Lamar could recover who neither had, nor pretended to have, any interest whatever in this cotton, either "*as a trustee and factor*," as they assert, or otherwise, who on the contrary showed that whatever advances had been made upon it had been made by C. A. L. Lamar, and not by himself, such a judgment would have been appealed by the United States, and would have, of course, been reversed by the Supreme Court. The Carroll case cited by these learned gentlemen (p. 17), however, does not help their contention in the least. In that case the Court of Claims decided that "a "*factor* in possession with a lien upon the property for advances "made" might recover for the entire value of the property taken. The Lamar case, in respect to these 136 bales, was

no such case as that. He was not a "*factor* in possession with " a lien upon the property for advances made," nor was he an administrator or executor of his son, who had made the advances upon the property as Mr. Lamar stated to the Court of Claims in his brief—there being no evidence, however, before the court on the subject one way or the other; and therefore it seems to me, with all deference to the better judgment of these learned counsel, that the Court of Claims under the Carroll case could not have given a judgment to Mr. Lamar for these 136 bales of cotton, even though they had accepted his brief as evidence; much less would they have done so when there was no evidence whatever before them in respect to these bales at all. I therefore differ with these gentlemen when they say that the law as " understood and administered in the Court of Claims in 1873," made it possible for Mr. Lamar to have recovered for these 136 bales. If he had proved that he was the consignee of these bales, and had made advances upon them, and if that issue had been presented to the court and tried, then under the Carrol case, before it was reversed, that court might have given him such a judgment, which would have been reversed; but how that proves, or tends to prove, that the Court of Claims would have given him a judgment, when not only he was not a *factor* and had not made the advances, but it appeared to the court that *his son* was the factor and had made the advances. In the case of the Martin cotton for which he did recover as owner, he had bought it with his own money for account of Martin, who never had repaid him anything, and therefore he could recover. This cotton was described in his petition (p. 60), and was proved in the receipt No. 32, p. 193 Record.

The various authorities also cited by the learned counsel to the effect that the strict rules of pleading are not enforced in the court of claims, would seem to have no bearing on the question, since there was *no evidence* whatever before the court in regard to these 136 bales; and therefore *if there had been pleadings* there could not have been a recovery; but there being *neither pleadings nor evidence*, it is not very interesting to inquire under what circumstances the court, with proper evidence, could have given a judgment when the pleadings were informal or defective.

4. My proposition, that the record in this case is *conclusive* evidence, is met (p. 25) by a decision of this court in accordance with well-settled law for ages, that "*if there be any uncer-*
"*tainty in the record*, as, for example, if it appear that several
"distinct matters may have been litigated, upon one or more
"of which the judges may have passed without indicating
"which of them was litigated, and upon which the judgment
"was rendered, the whole subject matter of the action will be
"at large and open to new contestation, unless this uncer-
"tainty be removed by extrinsic evidence, *showing the principal*
"*points involved and determined.*"

If it had been true in this case that Mr. Lamar made a general claim for a gross sum of cotton, and the record furnished no proof as to what constituted that gross sum, it would be competent to prove *dehors* the record, what the testimony was upon which the court acted; and that is the whole extent of the principle of law decided by this court; but where the record shows exactly what the testimony was, in respect to everything that was decided, it does not strike me as very pertinent to cite authority to the effect that *if the record were not explicit* extrinsic proof might be offered. In my brief I admitted this principle when I said that "while Mr. Lamar's statement or
"belief in his lifetime *is competent* evidence, *it is not conclusive*—
"while the *record of the Court of Claims* is conclusive;" and I do not now understand these gentlemen to controvert that proposition, or to assert that the *record* can be corrected by parol proof, but only to say that *if* the record does not show the truth, but leaves it in doubt, proof may be offered to supplement, not to correct it.

The learned counsel say on this point (p. 25): "It is *useless*
"for anybody to deny that this record does *not* determine what
"lots of cotton made up the 3,184 bales of upland cotton
"which the record (p. 50) shows did enter into the judgment,
"and it is precisely *this* question which extrinsic evidence is al-
"lowed to settle, according to the decisions last referred to.
"*This record is no evidence at all in regard to that point*, except
"in so far as the record shows *that it was possible, as a matter of*
"*law, to prove and recover for the seizure of the* 136 *bales*, and
"also except, as the record shows, what evidence and argu-
"ment was submitted to the court of claims regarding the lots

" which made up these 3,184 bales of upland cotton recovered for."

As I had very emphatically in my brief *denied* that the record admitted the possibility of these 136 bales, it seemed to these gentlemen " *un*questionable manners," to say that it is useless for anybody to make that denial. I still, however, must persist in making that denial, at the risk of another lecture on the subject. Not only is the record plenary evidence in regard to that point; but it contains specific proof in respect to every bale of cotton for which Mr. Lamar could possibly have recovered. On this point my statement that he was the *owner free from any claim by any person whatever of all he recovered*, is severely criticized on pages 28 to 35. The criticism is founded chiefly upon the assumption that Mr. Lamar was not the absolute owner of so much of the cotton, out of the profits of which, if sold, Charles A. L. Lamar and Cheever were to be paid for their services in purchasing it; and this is a question of law. If I made any mistake in using the term "absolute owner" in respect to that cotton, my ignorance must be my excuse. I have not looked at the authorities for the purpose of correcting myself if I am wrong. I supposed the law to be, and still believe, that where a person employs an agent to buy property for him, and pays his own money for it, and agrees to pay that agent for his services out of a share of the profits which may be realized by the sale of that property, *he is the full and absolute owner of the property itself*, and the agent who is to be paid for his services out of the profits has *no ownership in the property* at all. It seems according to Messrs. Shellabager & Wilson, that I am mistake in this view and ignorant; and therefore when I said Mr. Lamar was the absolute owner he was not. I shall submit that question to the judgment of this court. *Somebody* is very ignorant on that subject; and if I am I must suffer the consequences in the estimation of this tribunal. But how does that prove, or tend to prove, that Mr. Lamar recovered for the 136 bales? No one says *they were* any part of this Cheever cotton, whatever may be the law of its ownership.

I used the expression in my brief, that Cheever and Lamar were *special partners*, upon which authorities are cited that all partners equally own the property. The word " special partner " is a statutory term, and is not known in the common

law of partnership. I used it as descriptive of the kind of partnership which the facts in this case disclosed—namely, that Lamar and Cheever were *specially* interested in the profits, and not in the property itself. If that was a mistaken use of the term it certainly could not have misled counsel who criticized it; since it was not intended to say that C. A. Lamar was a *statutory special partner* of his father, but only to say that his interest was of that *special* kind which the facts disclosed, and that he was not a "general partner."

5. I am also attacked by this statement (p. 33).

"Mr. Dickerson's point is that the proofs establish the "claimant's ownership to be *exclusive of everybody else* in more "cotton than he recovered for. Our reply to this point *is a* "*direct and peremptory denial of the accuracy* of the assertion. "*It is not true, as a matter of fact, and the record shows it not to be* "*true*, either that the brief of Denver & Peck was *confined* in "its claim of recovery to cotton in which no one else had an "interest than the claimant, or that the proofs so show. On "the contrary, we have above pointed to two items of cotton, "to wit, the thirty-two bales of Sea Island, and the 136 bales "of Gue cotton, as to which the will of Mr. Lamar declares "that he was not the full owner, and it describes the kind of "interest that he held along with his son, Charles."

Again, "Mr. Dickerson's point" is lamentably misunderstood by the acute counsel on the other side. It is entirely immaterial in this controversy whether the proofs establish the claimant's ownership to be *exclusive of everybody else* or not, so long as they *exclude the possibility of these 136* bales; and a reference was made to the testimony item by item for the purpose of showing that these 136 bales were excluded.

I did not undertake to examine the testimony for the purpose of ascertaining whether, in an action by Mr. Lamar against another claimant in possession, there was sufficient proof of ownership in this cotton to have enabled Mr. Lamar to have recovered it. I examined it only with reference to the question whether it did not necessarily exclude the 136 bales. If my language bore any broader construction than that, it was more than was necessary to my case. What I said in my brief (p. 19) is in these words:

"The record speaks for itself. If there was any claim made

" for these 136 bales, or any proof offered in respect to them, " if there is any single bale of those for which Mr. Lamar " recovered that is not *specifically proved to be his own absolute* " *property, bought and paid for by nimself*, that can be shown " to the court; AND I CHALLENGE THE PRODUCTION OF A WORD OF " PROOF IN THAT RECORD TO THE EFFECT THAT MR. LAMAR EVER " CLAIMED TO OWN OR TO RECOVER FOR THESE 136 BALES."

To the best of my belief that statement, even strictly construed, is true to-day. The two items of 32 bales of Sea Island, and 136 bales of Gue cotton, referred to by the learned counsel in the above paragraph as disproving the accuracy of this statement, are proved in the record of the court to be Mr. Lamar's cotton, *by just such proof as established the same ownership in respect to the other items.* The learned counsel cite Mr. Lamar's will as proving that he was not the owner of these cottons. I said nothing about the question whether he *was the owner or not.* I said he had proved himself to be such in the Court of Claims; and so he did. When he instructed his solicitors to disclaim the cotton which he thought he ought not to recover for, this cotton was discarded, with a large amount of other bales; but the *proof* offered by his solicitors established his right to recover for these bales, and the only reason he did not recover was that he voluntarily disclaimed a large number of bales.

I challenged the production of a word of proof in that record, to the effect that Mr. Lamar ever claimed to own or *to recover for these bales*, and that challenge has not been met or attempted to be met.

In Denver & Peck's brief (p. 201) a summary of the 4,057 bales of cotton is made, each item of which is identified by the railroad bill of lading; and the complainant in this case, who files his brief along with the others (p. 3), says that Mr. Lamar "received an award from the Court of Claims for the " whole of the 3,275 bales of upland and Sea Island cotton, " *word for word and figure for figure, for the number of bales of* " *each kind of cotton, and the price of each as stated by his solicitor* " (R., p. 201)."

That record " word for word and figure for figure," as McCay truly says, describes the cotton for which Mr. Lamar recovered; and *no single bale of it was of the* 136 *bales* now in suit,

and every bale of it was traced to its origin, and the marks of it were given in the receipts referred to in that list, a copy of which is annexed to this brief, reprinted for the convenience of the court.

The learned counsel supposes that Mr. Lamar's will, written about a year before the declaration was filed on which the recovery was had, and the erased portions of Mr. Lamar's brief, founded upon a *former petition*, and also filed *before the declaration* on which the recovery was had, in some way show what evidence was offered to the Court of Claims upon which the recovery was founded. How they show it *does not* appear; *what the evidence was, does* appear. And Mr. McCay, whose specialty is figures (as he is said to be a professor of mathematics), has worked it out with great accuracy in his brief, when he points out, at page 201 of the record, exactly the cotton out of which the recovery was had (see p. 3, McCay).

The total amount of cotton in Savannah accounted for by the best proofs Mr. Lamar was able to offer, and which excluded the 136 bales in controversy here, was 4,057 bales, out of which Mr. Lamar claimed only 3,275 bales *as his own stored in Savannah*. If Mr. McCay is right, as without doubt he is, then, at the risk of another lecture on the subject, I say it is as certain as any arithmetical certainty can be, that the recovery did not include the 136 bales in question; since each one of the items *specified on page* 102 is identified *as distinct from those* 136 *bales*.

6. I am criticized very severely by Messrs. Shellabarger & Wilson (p. 27) for having said that "in the petition on which "the case was tried, he *expressly omitted* any mention what-"ever" of these 136 bales, and they say that "a reading of "the petition shows the fact is not so, but the reverse."

In dealing with such statements as these, I feel myself greatly embarassed as to what I should say. I must be lamentably ignorant of the English language, or such charges against me must be grossly indecent. The simple fact was as I state it, that in the third petition these 136 bales were specified, and were included in the amount for which judgment was claimed. In the fourth petition, sworn to by Mr. Lamar, these 136 Bales were "*expressly omitted*," and the total for which the judgment was claimed was reduced within the limits

of the number of bales of which the third petition had stated "he was the absolute owner in his own right."

I used the adverb "expressly" to mark the contrast between the two petitions—one of which had in it these 136 bales, and which were amended out of it by the final petition; and I submit to the court with great confidence that the expression, both in law and in language, was entirely just. The word "expressly" is defined by Webster as meaning, "in an express, direct or pointed manner: in direct terms; plainly." And Shakespeare is quoted as saying "expressly against the laws of arms;" when he meant that the violation of those laws had been very plain. So much for the language.

In law, when a declaration is amended by striking out one of the counts, that is an "*express*" waiver of the count so struck out, and no recovery could possibly be had under it.

Messrs. Shellabarger & Wilson, however, entertain such views of language and law as that they feel justified in saying to this court that "the petition (meaning the amended petition) "shows the fact is not so, but the reverse"—that is, that its reading shows that 136 *bales* have not been "*expressly omitted*" from it.

7. Messrs. Shellabarger & Wilson devote from pages 43 to 48 to proving that the Richmond Company owned these 136 bales of cotton. The only testimony there is on the subject, however, is inferential from the fact that that company had 244 bales in Charles Lamar's warehouse at some time during the rebellion, and that Mr. Lamar *said* that there were 136 bales in that warehouse, marked X, Y, Z, &c., which "belonged to a "gentleman in Virginia." What became of the others does not appear; nor are these 136 identified by the marks under which they were bought, which the company might have done, since they bought all their cotton by marks.

But I need not lay any stress upon the uncertainty attending this fact; and, for the purposes of the case, it may be assumed that 136 bales out of 244 belonging to "a gentleman in "Virginia" were seized by the Government. At any rate, Mr. Lamar thought so.

My attention is called by these briefs to a state of facts, however, showing the entire uncertainty on this subject; which is, that the United States officers purposely removed all the

marks from the cotton, and that Mr. Lamar himself was strictly restrained from being present at the time of the seizure and removal of this cotton; therefore, he could not have known, of his own knowledge, anything about it (Herbert, p. 7).

8. Messrs. Shellabarger & Wilson say (page 48) that they rely upon Mr. Herbert's brief to establish the validity of the assignment to McCay; but they add some new views of their own, which they must have supposed were convincing.

The first of these is, in substance (page 49), that, after all, this action is not founded upon a written assignment, but upon a verbal arrangement which culminated in a written assignment; and that, therefore, there is no necessity to prove the written assignment. As it is generally true that all paper writings are the result of a previous agreement that they shall be made, counsel's method of disposing of them, when made, would seem to be of very universal and important significance.

How these gentlemen establish a *verbal assignment*, however, by a corporation to an assignee of a chose in action, is by this answer of McCay (page 34): "Before signing the bill of "complaint, which contained a statement that I had such an "assignment, I asked my attorneys, Messrs. Stewart & Her- "bert, to write off such an assignment, which was duly exe- "cuted and signed by the officers of the company." This answer, the court will observe, was made for the purpose of accounting for the loss of the written assignment, and of proving that it had existed, with a view of giving parol testimony of its contents, and not for the purpose of proving a parol assignment antecedent to the written one. If the gentlemen had taken the trouble to look at the dates of the assignment and of the bill of complaint, they probably would have not given such an interpretation of this answer as they seek to give.

The assignment is dated March 3, 1877 (page 49). The bill of complaint was sworn to August 26, 1879, about two years and a half afterwards; and it was sworn to at the City of Altoona, Penn. (p. 5); so that unless the bill was drawn and presented to Mr. McCay for his signature two years and a half before it was sworn to, the interpretation of this answer is not the correct one. Joseph B. Stewart, however, who seems to

have been the contriver of this suit, tells the story differently (page 36), when he says, "I caused to be prepared a formal "written assignment, to be executed by the same Richmond "Importing and Exporting Company, and by it, *through the* "*hands of the complainant Charles F. McCay, was brought back* "*to my office some time before the commencement of this suit*, and "was seen and examined by the solicitor of record, Mr. Her- "bert and myself;" which statement is consistent with the dates of the assignment and of the subsequent bill of complaint. The "*some time* before the commencement of the suit" was two years and a half, a part of whish time was used by Mr. McKay after he became assignee in negotiating with the defendant (sec. XV. bill).

The fact was, however, that McCay was a mere man of straw in the business, having no interest in it, and having paid nothing for it (pages 46, question 38 to 46); and therefore I said *truly* that this suit was a *speculation*, for which I have been lectured. It is very probable that when he was asked to swear to the complaint he called for an exhibition of the assignment, which he was to swear to, and then saw it, and was thereafter called as a witness to prove he had seen it, when it had been mislaid by the gentlemen engaged in prosecuting this suit. Strike out of the case, however the written assignment, which is described in the bill in these words: "That since the death of the said G. B. Lamar "said company has by a proper and full assignment trans- "ferred and *delivered to your orator for value* all its right, title "and interest in and to the said 136 bales of cotton and the "proceeds thereof," and there is no proof in the case on which any recovery could be had, even if all the other conditions were complied with.

All the testimony on the subject is to establish the existence of the written assignment when it was mislaid, and to prove it when it was produced.

McCay was asked (page 26, question 21), to *produce the assignment* as a part of his answer, and he answered that he was the assignee, and that he *had delivered* the assignment to Messrs. Stewart & Herbert.

Joseph Stewart was called to prove its existence and its loss, and he fixed the order in which the assignment and the

bills were made; and finally the assignment itself was produced, but not legally proved.

Messrs. Shellabarger & Wilson make a very neat point of law in these words: "*First*, the fact that a writing was after-"wards resorted to prior to the swearing of the petition and "making the assignment in due form, will hardly be claimed "to *have invalidated the prior verbal assignment.*" Not only will it not be claimed to have invalidated that "prior verbal" arrangement—whatever it was—but it will be claimed to have validated it, and reduced it to certainty in a written form which merged all the negotiations before its execution—as the law is commonly understood.

9. Messrs. Shellabarger & Wilson boldly attack the proposition that the subscribing witness must be called to prove a sealed instrument by this statement (page 49): "It is held in "that State (*i. e.*, New York) that the proof of handwriting of "the parties to an instrument may be made by the *admission* "*of the party himself or proof of his handwriting without produc-*"*ing the subscribing witness.*

"Hall *vs.* Phelps, 2 Johns., 451.
"Fox *vs.* Reil, 3 Johns., 477.
"Shaver *vs.* Ehle, 16 Johns., 201.
"Henry *vs.* Bishop, 2 Wendall. 575."

This proposition is a very startling one to a common law lawyer, and I had the curiosity to refer to the authorities. The *fivst* one is that in an action against the maker of a promissory note, *not under seal, his admission* that he signed it is competent evidence *against* him, although there was a subscribing witness.

The second of the cases has this syllabus: "Where there "is a subscribing witness to a *bond*, proof of the confession "of the obligor *is not sufficient*, but the witness must be pro-"duced, or in case he is dead or not of the State, his hand-"writing must be proved."

The *third* of the cases was on a promissory note *not under seal* against the maker, and the court required the production of the subscribing witness, because the admission of the defendant was not sufficiently explicit.

In the *fourth* of the cases the common law was confirmed

that an instrument under seal to which is affixed the name of a subscribing witness, *can be proved only by such witness* unless it appears that his attendance cannot be procured.

A very comical application of the rule that the maker of a promissory note can be *charged on his own confession* to the case at bar, is thus stated by the learned counsel (p. 50): "He, "(Harrison) thus *for himself and the corporation in court con-* "*fessed to the assignment* and the due execution of the "instrument"—the suit being, as the testimony shows, to recover money for the benefit of Harrison and McCay. There is only one parallel to that within my experience. The friend of a somewhat pretentious person asserted that he was the *greatest lawyer* in New York, and being called upon for his proof, said that he had heard his friend *confess it himself.*

10. Messrs. Shellabarger & Wilson make another formidable point on the objection to the insufficiency of proof of the assignment. They say:

"*Third.* This question was not 'especially' called to the "attention of the court in the trial in the Circuit Court, so far "*as the record discloses,* or so far as in any way appears; and "hence it is *too late* to make the objection here. The familiar "rule of the court is that which is expressed in such cases as "Houghton *v.* Jones, 1 Wall., 702, where the court holds:

"This court will refuse to consider objections to the docu- "mentary evidence of title produced on the trial of an action "of ejectment, unless they are presented in the first instance "to the court below, if they are of a kind which might have "been there obviated."

The authority cited is very familiar law, which is, that unless there be an objection *at the trial* to the admissibility of the testimony, when the defect might have been remedied if the attention of the other party had been called to it, the objection shall not be entertained in the appellate court; and in the case cited the fact stated was that "no objection was made "*on the trial* to the grant from this want of presentation to the "court or consideration by it."

In the opinion, Mr. Justice Field says: "It is a sufficient "answer to this objection that it does not appear from the "record to have been urged in the court below"—meaning that the objection was not taken to the admissibility of the

testimony when it was offered. Learned counsel, however, are misled by this language of the court into the belief—or they certainly would not have made this point—that although the objection *was made in time to the admissibility* of the testimony when it was offered, yet unless counsel *urged* that objection to the court in a speech, the decision cannot be reviewed—which, certainly, is not the meaning of the authority.

I think, however, that I have a right to make a modest complaint to the statement that this question was not "especially "called to the attention of the court in the trial in the Circuit "Court, so far as the record shows." The counsel for appellee *know the fact to be*, that the objection was urged upon the court in a printed brief, and orally; although it is of no consequence whether it was or not, if the objection appeared on the record as it does.

On page 12 of my printed brief, filed in the Circuit Court under the rule in New York, the point is thus made:

"(*A.*) The paper purporting to be such assignment is not "proved by the subscribing witness, as the law requires it to "be, and, therefore, has no validity.

"King *vs.* Smith, 21 Barb., 158.
"Jones *vs.* Underwood, 28 Barb., 481.
"Keyser *vs.* Sickel, 34 Barb., 84.
"Cone *vs.* Purcell, 56 N. Y., 649.

"The objection was duly taken (Record, p. 53, folio 155)."

11. The last objection made by Messrs. Shellabarger & Wilson is remarkable for its legal acumen and ingenuity. On page 51 they say, that "the *main question* in this case was not *any as-* "*signment to Mr. McCay*, but the *liability of a trustee*, Lamar, "to account to its owner for the proceeds of trust property "which he had received, and the question of the assignment "to Mr. McCay being *collateral to that*, this question of as- "signment is brought, WE THINK, within the 5th exception "stated in Mr. Greenleaf (13th ed.) 5736, where the author "says:" &c., &c.

According to this "THINK" in an action founded on a sealed instrument whose execution is denied by the defendant, in case the defendant is charged as a *trustee*, it is not necessary to prove

the deed, since the *main question* is whether the defendant is a trustee, to which the immaterial matter of the title of the plaintiff to call him to account, *evidenced by a deed, is merely collateral,* and does not need to be proved. No comment is necessary.

12. Messrs. Shellabarger and Wilson devote the remaining five pages of their brief, excepting the last paragraph in which the "Websterian monosyllable" is applied to me, notwithstanding Mr. Webster's warning that it ought not to be used in the presence of "ears polite," to proving that the Richmond Company was not an unlawful corporation. And for that purpose the authority of this court is cited, in a case in which it was decided that corporations "which were "neither in their *apparent purpose, nor in their operation, hostile* "*to the Union or in conflict with the Constitution*" might maintain an action in the United States Courts. The application of this rule to this corporation, in view of the evidence, would seem to be very plain. The only "operations" which this corporation was engaged in, according to the testimony, was running the blockade, in which it had several vessels employed; and its "*apparent purpose*" was "owning and "navigating ships and other vessels engaged in foreign and "domestic commerce *trading from the ports of the Confederate* "*States.*" "Hambleton, one of the company, testified" (p. 39, 40): "The business of that company was importing and ex- "porting of goods within the Southern States, whenever they "could land them with safety." Q. 41. What do you mean by "'with safety?' A. Getting them in without molestation. Q. 42. "Molestation from whom? A. As I said in my former answer "it was *currently rumored* that cruisers were watching to pre- "vent the ingress and egress of vessels, and with a view of "avoiding any such interference, is what I mean by molesta- "tion." The ingenious argument is, that inasmuch as President Lincoln authorized American vessels, under certain circumstances, to bring cotton out of the Confederate States, *therefore,* it was not an unlawful thing for the Confederates themselves to own and navigate vessels, trading *from ports of the Confederate States,* which were all declared under blockade, and with such vessels to run the blockade. There seems to

be some defect in that logic, not necessary to point out to this court.

In Mr. Herbert's brief he says: "There is no evidence in "this case even tending to show that it ever gave any aid to "the rebellion, except what might be inferred from a part of "the 'purpose' of its character. Against that feeble infer- "ence is the positive and uncontradicted testimony of Ham- "bleton, *supra*, that it never did render any such aid or "comfort" (p. 22).

This statement is made in view of the testimony that the only business of the concern was to run the blockade (p. 39, Q. 40); which, according to Mr. Herbert, was not rendering aid and comfort to the rebellion. It all depends upon what those acts mean, and I shall not discuss that.

Mr. Herbert's Brief.

I.—Mr. Herbert at pages 16, 17 and 18 has come within one bale of a coincidence between the amount *proved* in the subsequent petition and the amount which Mr. Lamar was trying to figure out of the proofs under the former petition, by selecting from Mr. Lamar's brief, based upon that withdrawn petition, a portion of the items which he was presenting to the consideration of the court, and by adding to that portion *eight* bales not in the specified lots, and 136 bales of cotton "owned by a gentleman in Virginia," whereby he makes up 3,274 bales; which is within one of the 3,275 claimed in his petition filed afterwards and recovered by Mr. Lamar. By referring to Mr. Lamar's brief, however, it appears that on making up his claim he did not confine himself to the 25 parcels, assumed by Mr. Herbert's to be the only ones for which he claimed. On the contrary, in his recapitulation he gives a grand total of 4,578 bales, which did include the 136 bales now in question, instead of 3,274 which Mr. Herbert says are all that he was pressing upon the attention of the court. From these 4,578 he deducted 3,274, and 688 which Henry Lafone claims, and then showed a balance of 616 bales "not claimed by G. B. Lamar but taken from his possession." So that instead of making up his demand within one of what he finally recovered, he showed by reference to proof 616 more than his

final recovery, which he rejected as "*not claimed*" by him. It *happens* that by addition and subtraction the 136 bales make up a total of 3,274, by selecting a portion out of the items of Mr. Lamar's brief and omitting the rest, which amounts to within one of his subsequent petition and recovery. But there is no reason whatever for selecting that particular portion of his total presentation and omitting the rest. There is no doubt that his total of 4,578 bales was taken from Savannah, and that he disclaimed all but 3,275; and there is equally no doubt that he offered no proof of ownership of these 136 bales.

There is another view, however, which disposes of this argument based upon a *coincidence within nine*, which is this: The judgment in the Court of Claims was for 91 bales of Sea Island cotton (see p. 50), but this summary of 25 lots contains 199 bales of Sea Island cotton as a part of the total of 3,266 bales, as Mr. Lamar states under the head No. 26, p. 205. It therefore follws of necessity that the cotton in these 25 lots was not *all* that was recovered for, but that 108 bales of upland cotton must have been recovered for outside of that particular list of 25 items. But there is no reason whatever for the assumption that the recovery was limited to the 25 items, inasmuch as the proof presents those 25 only as a portion of a total much greater.

I conclude, therefore, as I said in my original brief, that there are neither *allegata* nor *probata* in the Court of Claims in respect to this cotton; and I submit with a great deal of confidence that no judgment could have been rendered by that court in the absence of both those preliminary conditions, even though it may be true that when that judgment was rendered, the Court of Claims, under the Carroll case as then understood by it, would have given Mr. Lamar a judgment for these 136 bales upon a *proper petition and proof* that he was the factor, and had made advances on that cotton, as he was not, and had not done in this case.

II.—On the question of the sufficiency of the assignment, this gentleman remarks: "It would seem useless to add to the "reasoning of the court on this point" (folio 282). The other counsel, however, have told your Honors that the attention of

the court was not called to the question, and certainly the court makes no mention of the point, and gives no *reasoning* on the subject whatever.

On the argument below, the court had not had the benefit of the suggestions in this brief, that the bill was not, in fact, founded upon the written assignment; and that the written assignment was only a *collateral* matter, and need not be proved; and that the assignment proved itself by the laws of Virginia—and, therefore, it gave none of those reasons for upholding it in the absence of legal proof; and no other reasons occurring to the court, none were given. Mr. Herbert then cites authorities to the effect that a seal was never necessary in Ohio to a bill of sale of personal property, and that, therefore, in that State, it was to be considered surplusage; from which he infers that the seal of this corporation is surplusage in its deed of assignment, and must be disregarded.

He also (p. 29) cites a text-writer to the effect that "the "corporate seal *imparts* its own verity and puts the burden upon the party attacking it," as an authority for the proposition that a sealed instrument by a corporation, in the presence of a subscribing witness, does not need anybody to prove it. It proves itself, and, therefore, all these various attempts on the part of this complainant to prove it were useless. All he had to do was to lay it on the table and it proved itself.

He also elaborates the same point made by Messrs. Shellabarger & Wilson, that "*the parties* to this instrument are not "disputing or contending about it, *they are content* with their "performance of it and under it," which he writes in italics; from which he infers that if this Mr. Harrison and Mr. McCay, who have a scheme to recover something from Mr. Lamar and divide it between them, are satisfied with the paper they have made, Mr. Lamar has no business to complain: it is none of his affair.

That is only equaled by Messrs. Shellabarger & Wilson's point, that the president of this company *confesses* that he executed this paper, and that is enough.

Mr. Herbert also states what *he says* is one of the revised statutes of Virginia. He quotes, what I presume, must be only a part of it, in these words:

"Every written instrument is presumed to be genuine, if the

" party purporting to have signed it be living, *unless he will* " *deny the signature on oath.*"

From which he infers, that in Virginia all that is necessary to do to recover anything from anybody, is to produce a paper, which, if genuine, would entitle the party to recover, and which the court will presume to be genuine, unless the defendant can find the person whose name appears to be written to it, if living, and " he will deny the signature on oath ;" which would seem to be a very convenient way to dispossess people of their property, if that is the law. Probably it is not. But whether it is or not in Virginia, it is certainly not the law of this court. Mr. Herbert very neatly applies the law to this case, by saying that the Richmond Company is a Virginia corporation, and that the parties who signed it are living, and that none of them have *denied their signature on oath.*

Mr. Herbert begins his reply to my brief by citing the authority of " *an eminent jurist* of eleven or twelve years ex- " perience on the bench," and who remarked that my brief reminded him of " all sorts of twisting and turning." The argument contained in that authority seems to have one defect at least, which is, that " the eminent jurist" who pronounced it is not named. If he had been, I don't see how it could be answered. In the last few years, New York has furnished so many " eminent jurists," who are not on the bench at present, and among whom there is a decided choice, that the learned counsel ought to have named his man.

III.—Mr. Herbert then proceeds (page 38) by saying that " *Mr. Lamar is nowhere in the bill charged as the executor or ad-* " *ministrator of his deceased son's estate.* He is described as the " legal representative of his deceased son, and so in a sense " he was."

As an able-bodied statement that probably has not been exceeded in either of the briefs, which abound in others of the same kind. The bill says (paragraph 3) : " That said Gazaway " B. Lamar ADMINISTERED *upon the estate of said Charles,* AND IN " THAT CAPACITY *came into possession of said cotton,* or a portion " thereof, and ever thereafter retained possession of said cot- " ton, or the proceeds thereof as *the legal representative* of the " said Charles A. L. Lamar." I had supposed that that lan-

guage described an administrator, who, in law, is the person who administers upon an estate; but Mr. Herbert knows better, and does not wish the world any longer to remain in such ignorance.

IV.—Mr. Herbert also says: "Counsel complains that the "bill was in part for discovery, but discovered nothing, and, "therefore, should be dismissed. It was not the fault of the bill "that it discovered nothing." From which he infers that a bill alleging a *right of discovery*, which the facts do not give the complainant, may be maintained after *those facts are disproved*, because it erroneously *claimed* the right of discovery.

V.—Mr. Herbert, on page 42, says that I am "*either juggling* "*with or deliberately deceiving the court*," because I stated that Mr. Lamar, in the substituted petition made by himself, "re- "duces his claim for cotton of which he was the absolute "owner and which was in the City of Savannah, to 3,275 "bales, from 3,793 bales set forth in Denver & Peck's peti- "tion, *thus throwing* off 518 bales in the City of Savannah; and the "juggle" and "deceit" consist in the use of the term "throwing off 518 bales."—Mr. Herbert being of opinion that I should have said "thereby correcting his solicitor's error of 518 bales." I had supposed that when Mr. Lamar "corrected his solicitor's error of 518 bales," and reduced the claim by that much, he was "throwing off" the 518 bales from his demand, and I am unable to see at present how that is "juggling with or deliberately deceiving" the court.

If the phrase I used constitutes deceit or jugglery, I am not sufficiently acquainted with the English language to discover it.

VI.—Mr. Herbert says (p. 42):—

"4th. Speaking of the lot of 136 bales, at page 14, he (I) "says: 'If, therefore, it is to be found in the 3,275 bales, for "'which Mr. Lamar recovered a judgment, it must be in the "'628 bales which in his petition he swore he owned himself, "'free from any claim by any person whatever.' Here is a

" bold assumption. No such parcel is mentioned, and no such " oath is taken in his petition."

I find that I made a mistake in subtraction in this statement when I said that the 136 bales must be found in the 628. The limit is much narrower. It should have been "in 202 bales" instead of 628.

The mistake arose from not deducting out of the total of 3,701, mentioned in the petition, the Tallahassee cotton, amounting to 426 bales. I will therefore state my original proposition over again correctly, making it so much the more objectionable to Mr. Herbert.

The petition (p. 58) says that "until 1865 your petitioner " was the *owner* and in possession of 3,701 bales of cotton, " * * * * of which 3,275 were stored in the City of " Savannah, Georgia." He then proceeds to describe these 3,701 bales.

The first lot is of 426 bales, seized at Tallahassee, and never in Savannah (fol. 101).

The second lot (p. 60) is of 446 bales of Cheever cotton.

The third lot is of 2,371 bales of Cheever and Lamar cotton.

The fourth lot is 256 bales of Martin and Thompson cotton.

Total *specifically described*, 3,499 bales, which, being deducted from 3,701 bales, leaves *only* 202 *bales not specifically described*, but included in the 3,275, which he said were stored in Savannah. Therefore, if the 136 bales in question are in that 3,275, they must be found in this 202 bales not specifically described in the petition, which narrows the limits of possibility very closely.

Turning now to p. 201 of the record, which is Denver and Peck's summing up of the proofs, and there are 3,677 bales proved by railroad receipt to have been forwarded to Savannah to G. B. Lamar from the interior, and 380 bales *purchased in Savannah* by Mr. Lamar—total 4,057—which the solicitors said "belonged to claimant." Now, up to this point of time, not even Mr. Herbert has said, that his 136 bales are to be found in these 4,057. But in order to make sure of it, by following up the testimony referred to in the summary, each of these parcels is identified by marks, and places of shipment, and none of them were these 136 bales; and other proof was

offered by Mr. Lamar's book-keeper, tending to show his payment of the money for these various parcels. The total amount proved was 782 bales *more* than Mr. Lamar claimed to recover for, on which his solicitors remarked (p. 201) that "Mr. Lamar "*only claims* 3,275 bales stored in Savannah; this discrepancy "*in his favor* of 782 bales *he can explain, and would be glad of* "*an opportunity to do so.*" In looking through these receipts not only are the 202 bales, *unspecified in the petition*, accounted for, but there are 984 other bales as coming from other sources than from the complainant in this case, and the *complainant's cotton is not* mentioned in any of these items, and is not pretended to be. It does not, therefore, seem to be a very "*bold assumption*," when I say that it is impossible to find the 136 bales claimed here among those for which Mr. Lamar offered proof and recovered.

In respect to this cotton I said in my brief (p. 15), that "every bale of cotton for which Mr. Lamar recovered, is traced "and identified by witnesses;" to which Mr. Herbert remarks with that truthfulness and courtesy, peculiarly his own, "now this statement is *simply untrue*" (p. 45).

If I made any mistake about it, it must have been an exceeding small one, for I have gone over the list carefully, and cannot find a single bale in all the receipts which is not *identified* either by the *name*, or by the *name and the marks*. The receipts are printed as an addendum, and a glance at them will show that if there is any one of those bales not identified by some mark, it is very well hidden indeed.

The 256 bales of Martin cotton are in receipt No. 32 (p. 193 of the Record), in these words:

"D. M. 256 from J. P. Cowles, for Capt. Martin."

That receipt was not arrayed by the solicitors, probably because it contained for the most part Importing and Exporting Company's cotton not claimed by Mr. Lamar. But the Martin cotton was otherwise proved.

Mr. Herbert's way of proving the "untruth" of my statement is by showing that all thsse marks were obliterated before the Government transferred the cotton to New York, which was undoubtedly true; but all these bales of cotton were *traced by their marks into the warehouses* from which the Government took them away, when the identification ceased because the Government destroyed the marks. The Government, however,

took all the cotton there was, and, of course, took that cotton which was identified by its marks. I did not say that the cotton was identified by its marks in Washington. The state of the proof was that it was identified in the warehouses from which the Government took it, and that is strictly true. And it is strictly true that no part of it was identified as the 136 bales in question here, which is the only important matter in the case on this point.

Mr. Herbert remarks (p. 15):

"When his counsel printed their brief and said Mr. Lamar "could explain this discrepancy in his favor, of 782 bales, and "would be glad to do so, Mr. Lamar's 'additional brief' *could* "*not have been printed.* There were only two briefs—that of "his counsel, and that by himself, which latter could *only be* "'*additional*' *by being printed after that of his counsel.*

"According to their figures the discrepancy was not *in his* "*favor but against him.* What they wanted him to have an "opportunity to do was to explain how he made up the "amount of 3,275 bales which he had finally claimed in his "last petition. He did take this opportunity, therefore, *after* "*his counsel's brief was printed,* in his 'additional brief;" which, to say the least of it, is ingenious. Mr. Lamar's counsel, according to Mr. Herbert, were asking for an opportunity to justify the *large claim* of 3,275 bales, not to explain why he did not press the *smaller one* of 4,057!!!

By referring to the Record (p. 203), it appears that the "additional brief by claimant was filed April 22, 1873," whereas the substituted petition on which the judgment was rendered was filed May 20, 1873 (p. 59), a month later than the additional brief. It is also evident that Denver and Peck's brief which was confined strictly to the cotton claimed in that amended petition was filed on the final hearing, and after the amended petition. But facts like these are mere trifles to Mr. Herbert, who never permits them to stand in the way of any statement which he thinks it interesting to his case to make.

Mr. Lamar so far as the record shows, and so far as his son and executor knows, never did make the statement which his solicitors proferred him as ready to make to the court; and to-day the proceeds of these 782 bales are in the Treasury of the United States, simply because Mr. Lamar, for some reason

known to himself, but not known to the Government, nor to any other person in the case, struck out that number of bales from those which were sufficiently proved to be his to entitle him to their recovery.

The court will see that there is no discrimination between the quality of proofs offered for all this cotton; and the Government made no attempt to discriminate between the different lots.

The court would have given judgment for all as well as for a part, but Mr. Lamar, although his solicitors had procured sufficient proof, would not avail himself of it having some conscientious motive which controlled his action.

The addition to the brief, so called, was filed and founded upon the second petition, signed by his solicitors and sworn to by nobody, and which claimed that "he was the absolute "owner in his own right of 3,793 bales, of which 199 bales "were Sea Island, and 3,594 were upland cotton; and that he "held, as a commission merchant, 392 bales * * * * * "of which 256 were held on account of the estate of R. Thomp- "son, deceased, and 136 bales on account of Holland, "of Richmond, Virginia (meaning probably Hambleton); that "the aggregate weight of the 4,185 bales was 2,0s2,500 pounds, "which was stored in the City of Savannah, in the State of "Georgia."

The petition said: "That the reasonable value thereof at "such time and place was $1,046,250," and he "prays the "judgment of this Honorable Court for this said sum of "$1,046,250."

On this petition Mr. Lamar made his brief, but he made no such claim in the brief as the petition made. On the contrary, he cut down his claim (p. 206) to 3,274 bales, and said, "not claimed by B. G. Lamar. but taken from his possssion "—616 bales."

This brief corrected the errors of the petition, and led to the filing of the new petition sworn to by Mr. Lamar himself, in which he stated his ownership to be of 3,275 bales, stored in the City of Savannah; and rejected all of the claims contained in the former brief above that amount; and he particularly omitted the "136 bales on account of Holland, of Rich- "mond, Virginia," which that third petition contained, and

which made a portion of the total for which it demanded a judgment.

VII.—Mr. Herbert, after admitting that his cotton was consigned to Charles A. L. Lamar, and that he, and he alone, made the advances upon it, attacks my statement (p. 49, paragraph 5), " that *by law* he (Lamar) could not have recovered " out of the proceeds of cotton seized by the Government for " money advanced upon it by his son under *any circumstances;*" which he says is " *worse* than the last statement I made, if possible."

What I meant to say was that, under any *possible existing* circumstances, he could not have done it. If he had been administrator or executor of Charles A. L. Lamar, and in *that capacity* had brought a suit, he might have recovered (although that is not entirely certain under the decisions) *for the advances of Charles A. L. Lamar* upon that cotton; but there were no possible circumstances on which he could have recovered for the *whole value of the cotton*, even if all those other supposed conditions had existed. It is not worth while, however, to discuss hypothetical questions. The real question is, could Gazaway B. Lamar, not being himself the owner, nor the factor of the owner, and not having made any advances upon the cotton, and not being the executor of his son, *who was the factor, and did make the advance*, recover *in his own name* in the Court of Claims, under the false pretense that he was the owner of the cotton.

I presume that even Mr. Herbert, who, certainly, is very capable of strong statements, would not say that he could *in law;* or that *at any time, under any view of the law which the Court of Claims ever took*, he could have recovered.

Mr. Herbert (pages 51 and 52) shows, what, no doubt, the fact was, that Mr. Lamar was acting as the attorney for the executrix of Charles A. L. Lamar's estate, and as such was trying to collect for that estate the money due it for compressing and storing the 136 bales of cotton. But the attorney of an executrix cannot maintain an action in the Court of Claims in his own name, *as owner*, to recover what is due to the *executrix of a deceased factor.* It seems a waste of time to follow such inconsequential assumptions as these.

This gentleman begins his brief by honestly admitting what his counsel succeeded in inducing Judge Wheeler to deny, and what they have spent so many weary pages of print in a similar attempt in this court, namely, that Mr. Lamar "received an award from the Court of Claims (R. p. 50) for the "whole of the 3,275 bales of Upland and Sea Island cotton, "*word for word and figure for figure, for the number of bales of "each kind of cotton and the price of each as stated by his solic-"itor (R. p. 201).*"

In view of the record, Mr. McCay saw no way of denying this fact, but, in view of the denials of his counsel, his honest admission seems to be entitled to some merit.

It follows from this fact that the proceeds of these 136 bales are still in the Treasury. Along with them are the proceeds of Mr. Lamar's Thomasville and Tallahassee cotton, of Mr. Lamar's I. and E. Companies cotton, and about fifteen millions of dollars of the proceeds of other people's cotton waiting for the action of Congress on the subject.

Some day, no doubt, Congress will open the Court of Claims to the different owners of these proceeds; and then Mr. McCay will have no difficulty in convincing the court, as he has no difficulty in convincing himself, that Mr. Lamar never recovered a judgment for those proceeds, and that their true owner may lawfully claim them.

Mr. McCay, however, being a professor of mathematics and not of logic, supposes that if he can show by figures that the testimony upon which he admits Mr. Lamar recovered was "fallacious and false" testimony, and that in fact a portion of this cotton which he proved to the satisfaction of the court to be his own, was really owned by his son, and that another portion of it was really owned by the I. and E. Company, of which he was president, it will follow logically that the Richmond Company's money now in the Treasury, will by some fiction of law be decided to be in Mr. Lamar's pocket, from which he can get it—for, thinks Mr. McCay, why should Mr. Lamar recover a portion of the proceeds belonging to his son, and another portion belonging to the Georgia I. and E. Company, when the Richmond Blockade Company stands in so much need of money to settle up its legitimate business in

which it lost so many vessels on the coast of Carolina. Mr. McCay is jealous of Mr. Lamar's Blockade Running Company, and thinks his company ought to have a share. In pursuance of this logical idea the professor resorts to that domain of science with which he is familiar, and makes a couple of pages of calculations with proper algebraic signs.

In order to qualify himself, however, to instruct the court, he begins with the following statement (p. 9).

"The brief, however, next undertakes to prove 'that of the "3,966 (defendant's counsel's brief, p. 16) bought outside of "Savannah, 3,929 were transported to Savannah.'

"It is very singular that neither the counsel of G. B. Lamar, "in the Court of Claims, nor of G. D. Lamar, his executor "in the present suit, notices that this contradicted entirely G. "B. Lamar's oath, in his first, and also in his last petition. For "in both he swore that 426 bales of his cotton bought out of "Savannah remained at Tallahassee, where it was seized by "the United States and claimed by him, whereas this brief "asserts that only 37 bales, the difference of 3,929 and 3,966, "of all his purchases outside of Savannah remained in the "country. Besides this, Mr. Lamar swore in his petition that "522 bales of his cotton were seized at Thomasville. Here "are nine or ten hundred bales sworn to be in the country, "never transported to Savannah, while the two briefs show "that all but 37 were brought to Savannah. This proves "most clearly how little these counselors knew of the facts in "this case. G. B. Lamar understood them, but neither of "these counselors had studied them or analyzed them, so as "to make any fair conclusion from them. *Neither of them* "*touches any of the facts without making mistakes.*"

As that statement elevates Mr. McKay far above Mr. Lamar's counselors he thinks the court must be very blind if it does not take his demonstration as the truth. Indeed, the Professor is in the same "confessing" mood as the rest of the party, and freely *admits* himself to know it all. If the Professor had taken the trouble to read Denver & Peck's brief a page further than he cites from it, he would have found that those ignorant gentlemen did not make the mistake which he attributes to them.

On page 202, under a 4th head, not enumerated on the 200th page, they account for the 426 bales seized at Tallahassee, and

which were *not* transferred to Savannah, and which did *not* come within their schedule; and the Thomasville cotton was not in the case at all; whereas, they did show *as matter of fact* the transportation of every one of the 3,929 bales to Savannah, by the railroad receipts for every bale of it.

But, passing by this piece of modest assumption, the Professor proceeds with his brief (p. 10), and says: "But "the truth was that the pretended proof was *fallacious* "*and false*, and that G. B. Lamar could not, and "did not, prove that he owned 3.275 bales ex- "clusive of the 136 bales advanced upon by his son, C. A. "L. Lamar;" and he cites as the first proof of this assertion the third item in the schedule, page 201, which he states to "be *for the* 141 *bales*." The fact is that it is for 114 bales and not 141; which mistake for a professor of mathematics seems to somewhat shock ones confidence in his accuracy. He carries this error of 27 bales throughout the whole of his calculations. The point which he makes on this item is that the transportation bills show that this cotton was consigned to C. A. L. Lamar and not to G. B. Lamar; from which he infers, without any proof, that G. B. Lamar was not its owner, and that when he recovered for it it was really the property of his son.

This item, according to the professor's theory, should diminish the total of the schedule by 114 bales—not 141 as he says.

The next item, which is for 326 bales, No. 9, he thinks he has proved ran the blockade, and were, therefore, not seized by the Government, and he therefore strikes them out. These bales were all Sea Island cotton, and are almost the only Sea Island cotton in the schedule. But the judgment gives Mr. Lamar only 91 bales of Sea Island cotton, and, therefore it could not have appeared to the court that these whole 326 bales had been shipped, and there is no evidence of their having been shipped. Mr. McCay's deduction is, therefore, large by 91 bales. But let that pass, and allow Mr. McCay to deduct the whole 326. Add these two together and the total of 4,057 is reduced to 3,617; still 342 bales more than the recovery, and it became necessary for the professor to dispose of these. He could not find, however, in the proofs supporting the schedule of page 201 any other defects, and he

thereupon resorts to Mr. Lamar's brief, in which it is stated that the I. and E. Company had 688 bales in Savannah.

The Professor then takes to logic and argues that these 688 bales "*must have been*" some way or other in the schedule on p. 201, and ought to have been deducted; although the proofs show no cotton in that schedule the property of the I. & E. Company; and upon this argument he proceeds to strike out these 688 bales from the total proved, and so reduce the sum below that which was submitted to the Court of Claims, as "belonging to claimant." It is probable that these two items were stricken out by Mr. Lamar's solicitors under his orders, and form part of the 782 bales thus rejected; but if so, it was done by Mr. Lamar only because *he knew he did not own them*, although the proofs showed sufficiently well for a judgment that he did.

One obvious consequence of this method did not seem to have struck this ingenious gentleman, which is, that in Mr. Lamar's brief the total amount of cotton (p. 206) accounted for is 4,578 bales—whereas the total amount accounted for in the schedule, p. 207, is only 4,057 bales—a difference of 521 bales. But in order honestly to transfer from Mr. Lamar's brief to the schedule of his solicitors, upon which this judgment passed, these 688 bales of I. and E. cotton, it is obviously necessary that the two accounts should contain the *same amount of cotton and coincide*; if not, even a professor of mathematics ought to know that a balance thus obtained must be false. In the summary on p. 201, the I. and E. cotton was rejected, when by chance some of the receipts for Mr. Lamar's own cotton contained some of it; and of course, Denver & Peck did not offer evidence, pure and simple, as to any I. and E. cotton. The receipts for this sort of cotton are by themselves, and as Denver & Peck were not claiming any such cotton, of course they did not offer those receipts in evidence; but no doubt such receipts must exist, as the I. and E. cotton was brought to Lamar, and some of it appears in Mr. Lamar's brief of earlier date, in which 4,578 bales are specified, containing a quantity of I. and E. cotton. Again the rules of his art are violated, and the lesser account of Denver & Peck, p. 201, is made to contain the greater of Mr. Lamar, p. 206.

It is a singular thing that to a mathematical mind it seems

logical and reasonable that Mr. Lamar, who discarded by items out of the summary of cotton proved to "belong" to him, whatever I. and E. cotton appeared in the receipts, and reduced his claim by striking out cotton, which the Professor thinks belonged to his son, and by that reduction reduces his claim, as the Professor thinks, below 3,275 bales, should have introduced the 136 bales belonging to the Richmond Company to make up his total. It should seem that if Mr. Lamar was in the business of recovering for other people's cotton than his own, he would naturally have preferred to recover the money due his son, who was a large debtor to him, and the money due his own blockade running company of which he was president and a large stockholder, than to recover money belonging to another blockade running company in which he had no interest whatever, and in which it is not pretended that he ever had any interest, either as creditor or otherwise. But to the Professor it seems a probable assumption; and his brief is founded entirely upon the idea, that Mr. Lamar, having rejected what he might have recovered, because the money was his son's and the I. and E. Company's, actually introduced into his recovery the money of the Richmond Company about which there was not a word of proof in the record at all.

The mathematical mind is often remarkable for its illogical methods.

The best mathematician in my class in college became a clergyman, and I heard him preach his first sermon, in which he demonstrated that heaven and hell were necessarily in close proximity, otherwise Lazarus could not have heard the appeal of Dives; which was mathematically logical.

In mathematics the symbols do the reasoning, and a habit of relying upon them tends to an atrophy of the logical process; very much as an habitual use of bear's grease produces atrophy in the follicles and leaves the hair entirely dry.

But suppose the professor's mathematics to be all right, his logical processes entirely fail; for how could it possibly prove that he is entitled to recover from Mr. Lamar for the proceeds of 136 bales which Mr. Lamar, by his own admission, never recovered for, because he shows that Mr. Lamar did recover for some of the proceeds of his son's and for some of the proceeds of his I. and E. Company's cotton. The profes-

sor's counsel saw this difficulty when they attempted to deny the fact admitted by the professor, being logicians and not mathematicans. But when the professor mixes both these methods in one brief, his two-edged sword is destructive.

EDW. N. DICKERSON,
Counsel for Appellant.

APPENDIX.

The following tables are appended for the purpose of showing the state of the proof in relation to the tracing and identification of the cotton claimed to have been *purchased by* and *forwarded to* Mr. Lamar. Table I. deals with the proof of the cotton *purchased by* Mr. Lamar, through his agents, and which is summarized in Denver & Peck's brief, Record, pages 198–200. Table II, consists of the railroad receipts referred to p. 201, printed in full, by which it was proven in the case how much of the cotton purchased outside of the City of Savannah were *forwarded* to Mr. Lamar at that city. The italicised references refer to the pages of the record in this case.

Table I.

Class as given in Denver & Peck's brief.	Marks or other Identification.	Remarks.
(a.) 32 bales (*p.* 198).	G. B. L., or G. B. Lamar (*p.* 63)	This was Sea Island cotton. The cotton in dispute is upland.
(b.) 136 " (*p.* 198).	H. S. (*p.* 70).....	This was purchased from Gue.
(c.) 212 " (*p.* 198).	S. M. (94 bales); J. W. M. (6 bales). (*See p.* 75), and also 112 (no marks..	The 112 were bought *in Savanah* (*p.* 76).
(d.) 295 " (*p.* 199).	H. W. (46 bales); W. L. S. (11 bales); T. K. L. (14 bales); S. S. (3 bales). *See Exhibit A, p.* 102. P. S. (12 bales); [*W. W. D.*] (5 bales). *See Exhibit B, p.* 102.	The first item under this head in Denver & Peck's brief should read "Exhibit A" 74 bales instead of 47 bales. The Exhibit shows this, and so does the sum total given in Denver & Peck's brief.

TABLE I.—(Continued.)

Class as given in Denver & Peck's brief.	Marks or other Identification.	Remarks.
	J. G. T. (29 bales). *See Exhibit C, p.* 103. T. B. (13 bales); W. Howard (7 bales); K. B., or K. Beaswell (37 bales); J. C. McKie (3 bales). *Exhibit D, p.* 104. W. W. D. (1 bale); W. L. S. (9 bales); D. L. C. (5 bales); A. M. C. (8 bales); J. C. B. (10 bales); D. L. C. (6 bales); S. H. H. (60 bales); D. B. (10 bales). *Exhibit E, p.* 105. H. Wyche (1 bale); E. F. (12 bales); B. B. (8 bales); S. W. S. (3 bales); McC. & T. B. (4 bales); R. S. W. (4 bales); J. B. (5 bales); L. H. R. (8 bales); J. S. H. (18); J. C. (3); L. W. (24). *Exhibit F,* 105.	
(e.) 361 bales (*p.* 199).	No marks.....	This cotton was bought by Young, Woods & Gardner, at Eufala, Alabama. *See page* 108.
(f.) 41 bales (*p.* 199).	L. (6, 1 and 2 bales); J. W. Belvin (14 bales); G S. H. (3 bales and 2 bales); [L.] 5, 8 and 7 bales; G. B. (6 bales); W. & N. (8 bales); [M.] 9 (bales); H. (6 bales); [F.] (8 bales); G. B. L. (3 bales); P. B. D. Cutter (8 bales); A. B. (10 bales); [o.] J. H. H. (4 bales); J. V. (6 bales); E. L. F. (4 bales); J. McM. (6 bales). *See Exhibit A, pp.* 125. 126.	
(g.) 3,268 bales (*p.* 199)	No marks.....	This was purchased by Cheever outside of the City of Savannah. The marks of the bales which were forwarded to Savannah, and of which these must necessarily form a part, are given in Table II.

Table II.

237 [141] GAZAWAY B. LAMAR *vs.* THE UNITED STATES. } No. 3222.

Receipts of claimant's cotton proved by the depositin of A. L. Lawson.

See p. 183 :

No. 1—p. 10.--A.

1862. G. B. Lamar to Sav'n', Albany and Gulf R. R. Co.:

Aug. 14.	J. J. W.,	100 bales	cotton, 51,650.			$273 75
	P. Ketterer,		guano, J. 401.....			35
Aug. 21.	K. Bracewell,	5 bales	2,560		...	12 31
	W. H. Howard,	7 bales	4,700		...	24 44
			C. A. C. L.			
	K. Bracewell,	10 bales	5,060	J. 401	...	26 31
	J. C.,	3 bales	1,400		...	7 28
		125	13,720			
Aug. 28.	J. J. W., 30 bales, W. W. C.,		14,621	76 34		
Sept. 7.	K. Bracewell, 22 bales, C. A. L. L.,		10,980	57 11		
	J. J. W., 260 bales, W. W. C.,		139,651	726 60		
	J. J. W., 14 bales, W. W. C.,		6,860	35 67	J. 401.	895 32
			172,112			
Sept. 3.	Am't earthen salt,	60				
	Capt. Spencer, rice, meal,	65	J. 401.....			1 25
	6 J. J. W.,	24 bales cotton				
	J. J. W.,		21,894 W W C.		J. 401	113 85
	J. J. W.,	21 do.				
	GBT or 7 TB	13 do.	6,325	C. A. L. L.	J. 401	30 36
		J J W				
	GBT 13 J J W	24 25 do.	11,485	59 72		
		34 *AH* W W C.	17,800	92 56	J. 401	
	J. B. Harry,	11 C. W W C.	5,615	26 95		179 23
		579	63,119			$1,565 45

Rec. pay't 8th Oct., 1862.

L. M. HAMILTON.

See p. 185:

No. 6—p. 35.—A.

G. B. Lamar to Atlantic and Gulf R. R. Co.:

1863.				
June 6.	C. C. 12 B. cotton	6,020		$52 98
	C. C. 20 do.	10,130		89 14
		16,150		
	(GC) 52 S I.	16,045	26,255	141 20
	(GC) 24 do.	8,515		74 93
	(GC) 6 do.	1,695		14 92
	1 J sugar	[070]		10 05
	114	42,405		383 22

Rec. pay't, July 10, 1863.

L. M. HAMILTON.

See p. 185:

239 [143] No. 7—p. 36.—A.

1863. G. B. Lamar to Atlantic and Gulf R. R. Co.:

July 2. To freight [Z] 54 cases tobacco..... $219 07

C. A. L. Lamar:

June 6. J J M 61. S. S. 2 W B 14 [M B] 12 H M 3 J J B 3 P 11—G A B 8—114 bales cotton $484 22

[S.] 10 sacks salt.....

W M 8 " 0— 24 00

Deduct bill, bags, and rice missing..... 753 54

P'd 25 July..... 276 00

477 54

L. M. HAMILTON.

See p. 187:

241 [145] No. 15—p. 16.—A.

G. B. Lamar to Sa. and Gulf R. R. Co.:

1862.					
Sept. 27.	G. B. Tiernan or	G. B. Lamar,	15 bales cotton..	7,735	$37 13
Oct. 1.	do.	do.	2 bales cotton..	1,050	6 30
14.	do.	do.	4 bales cotton..	2,090	12 50
				10,875	55 93

Dec. 22.	S. Simkins,	22 bales rope	1,970	$11 23	
	do.	1 bale bagging	740	4 22	
	J. J. Bradley,	10 coils rope	850	4 84	
	do.	2 bales bagging	1,540	8 78	
Dec. 15.	S. Simkins,	4 do.	2,900	16 53	
					45 60
					$101 53

Rec'd pay't, January 13, 1863.

L. M. HAMILTON.

See p. 188:

No. 19—p. 2.—B.

G. B. Lamar to A. & G. R. R. Company:

1864.					
	3,470	46,645	61,299		
April 21.	JJD 7	JK 95	K 123		
	225 bales cotton from Thomasville, 111,414 lbs				2,116 87
30.	1 barrel lard from Turkman, 305				3 66
					$2,120 53

Rec'd pay't, May 7, 1864.

A. F. BENNETT, Jr.

See p. 189:

No. 21—p. 5.—B.

1864. G. B. Lamar to A. & G. R. R. Co.:

May 21.	To freight—					
21.	K	15 bales		7,330		
	J K	23 do.		11,250		
					18,580	$353 02
28.	K	34 do.		23,885		453 82
	J K	23 do.		11,075		210 43
	L	32 do.		14,215		248 75
	K	5 do.		2,460		46 75
June 4.	L	160 do.		77,495		
						1,356 20
	K	19 do.		9,715		
	J K	10 do.		4,990		
						279 40
	L	58 do.		29,430		511 25
		379		191,845		$3,459 62

Rec'd pay't, June 20, 1864.

A. F. BENNETT, Jr.

See p. 189:

No. 22—p. 5.—B.

1864. G. B. Lamar to A. & G. R. R. Co.:

June 16. To freight L, 4 bales cotton, 2,055 c. $3\frac{1}{2}$ $71 92

Rec'd pay't, 24 June, 1864.

A. T. BENNETT, JR.

See p. 190:

244 [148] No. 23—p. 8.—B.

1864. G. B. Lamar to A. & G. R. R. Co.:

May 30.	To freight—						
	G A C,	63	bales cotton....	31,073		$1,180	77
	B C,	38	do.	17,900		680	20
	B C,	48	do.	22,135		841	13
	G A C,	70	do.	35,335		1,342	73
June 17.	K,	34	do.	17,155			
	J K,	12	do.	5,965			
						878	55
	L,	41	do.	21,820		736	70
	K,	1	bale missing, not p'd	502			
23.	W C,	15	bales cotton....	5,855		222	50
30.	C C,	11	do.	5,700			
	W T,	25	do.	2,725	8,515	323	57
	A. M. Sloan, (5) bars iron...			(385)		8	86
July 1.	G. A. C., 34		bales cotton....	17,845			
	C C,	60	do.	32,120			
	W T,	5	do.	2,390			
	B. C.,	16	do.	7,700			
						2,282	09
	L,	234	do. ...	116,119		4,412	52
2	L,	80	329 B.]	39,637		1,506	20
5	L,	15	do.	7,420	63,176	281	96
7c.	G A C,	28	do.	13,890			
c.	B. C.,	5	do.	2,150	16,040	609	52
9c.	L,	1	lot loose.....	1,000		38	00
12c.	G A C,	18	bales cotton....	8,830		335	55
14c.	K,	1	do.	505			
c.	J. K.,	2	do.	994			
						57	00
c.	G A C,	11	do.	5,522			
c.	B. C.,	1	do.	430			
						226	18

16c. G A C,	118	do.	59,270		
c. B C,	9	do.	4,120		
					2,408 82
21c. G A C,	17	do.	8,375		
c. B C,	13	do.	6,140		551 57
Aug. 2. L H,	(24) I. & E. Co.....		(11,013)		$18,924 42
					385 45
245 [149] 1864.					
c. G A C,	41 bales cotton....		21,260		807 88
c. B C,	11 do.		5,205		197 79
	1,054 bales mine		527,087		$20,315 54
			4. 15. 11. 7		

Rec. pay't 13th Aug't, 1864.

WM. H. BENNETT.

See p. 191:

No. 25—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.			
Aug. 2. J O M,	24 bales cotton	11,835	$414 22
I. & E. Co., J O M,	30 bales cotton.....	15,920	557 20
		27,755	971 42

Rec'd pay't 18 Aug., 1864.

WM. H. BENNETT.

See p. 192:

246 [150] No. 26—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.				
Aug. 3.	1 roll bagging to Quickman, I. & E. Co..... ...			$2 19
12. L H.,	177 bales cotton,	82,371, I. & E. Co..		2,883 00
J. W. Spain,	20 do.	8,654, I. & E. Co..		302 90
J O M,	4 do.	2,015, I. & E. Co..		70 53
D & P.	12 S. I.,	3,974, W. W. C. & C. A. L. L.		191 60
L H,	1	535, I. & E. Co..		18 72

Rec'd pay't, August 26, 1864.

WM. H. BENNETT.

See p. 192:

No. 27—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.

Aug. 27. To freight, L. H., 3 bales cotton, 1,200 lbs..... ..... $42

Rec'd pay't, Sept. 8, 1864.

A. T. BENNETT, JR.

See p. 192:

No. 28—p. 10.—B.

G. B. Lamar to A. and G. R. R. Company:

1864.						
D M, 44		Bales cotton,	23,460 c.,	3.80.....	$891 48	
161	255	do.	84,780	3.80.....	3,221 64	
50			26,005	3.80.....	988 20	
						$5,101 32
D & P, 16 bales sea island,			5,273	4.80.....		25,310 10
17 Sept., 1864.....						$5,364 42

A. T. BENNETT, Jr.

See p. 193:

No. 30—p. 11.—B.

G. B. Lamar to T. A. Goodwin:

	1864.				
W W C,	Aug. 4,	G A C,	133 b. cotton,		
W W C,	4,	B C	86 219 do.	at $1.50...	$328 50
Geo.,	5,	State Georgia, 15 b. cotton, C. & R. R. R.....			22 50
Jt. ac. C A L L,	5,	of Meimhard,	100 b. cotton...		150 00
I. & E. Co.,	10,	L H,	24 do. ...		36 00
W W C,	10,	G A C,	41	do. ...	78 00
W W C,	10,	B C,	11		
247 [151]	1864.				
I. & E. Co.,	Aug. 10,	J. O. M.,	24 b. cotton.		$36 00
do.	16,	L. H.,	177 do.		265 50
do.	16,	J. O. M.,	34 do.		51 00
do.	16,	J. W. Spain, J. W. S.,	20 do.		30 00
W. W. C.,	20,	D. & P., S. I.,	12 do.		18 00
Paid.....					1,015 50

Savannah, Sept. 22, '64.

T. A. GOODWIN,
Per J. H. WILLIAMS.

No. 30—p. 12.—B.

G. B. Lamar to A. and G. R. R. Company:

1864. Sept., freight [D M] 1 bale cotton, $19.
Rec'd pay't, 23 Sept., 1864.

A. T. BENNETT, Jr.

See p. 193:

No. 31—p. 12.—B.

G. A. B. Lamar to A. and G. R. R. Company:

1864. Sept. 20. To G. A. C., 20 bales sea island cotton, 6,366..$305 59

Rec'd pay't, 30 Sept., 1864.

A. T. BENNETT, JR.

See p. 194;

No. 34—p. 14.—B.

1864. G. B. Lamar to A. & G. R. R. Company:

Oct. 18. (W) 13 bales cotton, 6,480..... $291 60
20. (G) 19 do. 7,850..... 353 25

644 85

Rec'd pay't, Oct. 29, 1864.

WM. H. BENNETT.

See p. 194:

No. 36—p. 15.—B.

1864. G. B. Lamar to A. & G. R. R. Company:

Nov. 3. W T, 15 bales cotton, 6,035..... $271 57
W. W. C. & C. A. L. L.

Rec'd pay't, Nov. 10, 1864.

A. T. BENNETT, JR.

See p. 184:

No. 2—p. 19.—A.

1863. G. B. Lamar to C. R. R. & B. Company:

Jan'y 14. 141 bales cotton, river, 346.75 32,431..... $671 07
20. W. S. Wharley, 95 bags guano, 14 08
J. S. Stevens, 30 5 46
L. Stevens, 31 (p'd by Charles) 5 67

21. 202 bales cotton, river, 552 26 = 506 63..... 1,068 89

30. 17 do. 39 78 37 10..... 76 88

238 [142] 1863.

Feb. 5. J. A. Clarke, 1 } 35c. }
A. J. Lane, 30 } 5 80 }
J. Pourad, 15 } 2 94 }
L. Wheddon, 15 } B'gs guano, 3 01 } $35 72
C. S. Laugnance, 59 } 11 31 }
G. R. Mubb, 71 } 12 31 } $1,852 56

Rec. pay't Feb'y 19, 1863.

JAMES A. COUVOISE, TR.

See p. 185:

No. 8—p. 65.—A.

1864. G. B. Lamar to C. R. R. Company:

Mar. 10.	C B 5 W A M 10 [M] 6 [H] 4 G B 1 W A M 1 [M] 3 H 2 [E] 8 G. B. L. 3 43 bales cotton from Fort Valley (W J N)		$412 80
	91 S. I. cotton from Augusta		733 45
			$1,136 25

Rec'd pay't March 28, 1864.

JAMES A. COUVOISE, Tr.

No. 10—p. 6.—B.

1864. G. B. Lamar to C. R. R. Company:

July 15.	S I 57		
18.	S I 84		
6.	S I 54		
7.	S I 30	326 bales cotton p. bills	$4,834 76
8.	S I 53		
9.	S I 48		
240 [144]	1864.		
July 28			75
	G. B. Lamar, jr., for meal, 75, sending Augusta, 82		1 58
			$4,837 09

JAMES A. COUVOISE, *Tr.*

Note.—It is evident that this is the receipt referred to in Denver & Peck's brief as No. 9, as can be seen from the nnmber of bales, 326.

See p. 188:

242 [146] No. 18—p. 37.—A.

G. B. Lamar to C. R. R. Company:

1863.					
June 24.	W 9 bales S. I. cotton, and exp'n's				$58 50
	M 92 bags guano	7,800	13 60		
	W 63 do.	8,060	14 10		
					27 70
June 25.	E. U. Lane, 30 bags guano	3,880	6 79		
	S. F. Lamar, 16 do.	2,080	3 64		
	G. W. Aaron, 1 do.		50		
					10 93
	In Bethea, 60 bbls. and 10 bbls.				32 39
July 7.	Sacks for guano				1 12

	In Bethea, 138 bbls. guano	65 47
11.	[11] 9 sacks	5 39
13.	320 sacks rice (16 lbs. to A. Blue)	126 88
	1 sack flour	1 10
14.	533 sacks rice (26.63 do.)	211 69
		$541 77

Rec'd pay't, July 31, 1863.

JAMES A. COUVOISE, Tr.

104-235

OFFICE SUPREME COURT U.S.
FILED
OCT 23 1883
JAMES H. McKENNEY, CLERK

UNITED STATES SUPREME COURT,

OCTOBER TERM, 1883.

No. 882.

G. DEROSSET LAMAR, as Executor of GAZAWAY B. LAMAR, deceased,

Appellant,

vs.

CHARLES F. McKAY,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

ARGUMENT FOR APPELLEE.

Filed.....

J. K. HERBERT,

Of Counsel.

United States Supreme Court,

October Term, 1883.

G. DeRosset Lamar, as Executor of Gazaway B. Lamar, deceased.
Appellant,
vs.
Charles F. McCay,
Appellee.

No. 882.

Appeal from the United States Circuit Court for the Southern District of New York.

ARGUMENT FOR APPELLEE.

Statement of the Issues.

The complainant in this cause, on the 29th day of August, 1879, filed his bill of complaint against the defendant, in the Court below, alleging in substance, as follows:

That, previous to the year 1874, the Richmond Importing and Exporting Company was the owner of a large quantity of cotton purchased and acquired through its agents, in the State of Georgia; that T. Edward Hambleton, as one of its agents, shipped several hundred bales of its cotton to one Charles A. L. Lamar, at Savannah, Georgia, for

storage; that among the cotton so shipped by said Hambleton, for said Company, was a special lot of 136 bales; that subsequently to the receipt of said cotton by said C. A. L. Lamar, he departed this life, and the said cotton came into the possession of his father, Gazaway B. Lamar, who administered upon his estate; that after the death of said Charles A. L. Lamar, and in or about the month of December, 1864, the said cotton was seized by the Government of the United States, shipped to New York City, sold, and the proceeds thereof paid into the Treasury of the United States; that subsequently said Gazaway B. Lamar commenced an action against the United States, in the Court of Claims, to cover the proceeds of a large amount of cotton, including said 136 bales; that, in due course of proceeding in said action, judgment was rendered in favor of said Gazaway B. Lamar and against the United States, for the proceeds of 3,275 bales of cotton, being $579.343.51, and including the proceeds of said 136 bales, amounting to $23,844.88; that in the month of April, 1874, the whole of said judgment of $579,343.51 was paid to said Gazaway B. Lamar by the United States; that, immediately after receiving said payment, he advertised in Richmond, Virginia, for the owner of said 136 bales of cotton, stating that he had recovered the proceeds thereof from the Government of the United States, and requesting the owner to come forward, prove his property, pay the proper costs, charges, and expenses, and receive the balance; that from and after said last mentioned date, and until his decease, he held the said $23,844.88, as the trustee of said Company; that, since the death of said Gazaway B. Lamar, the defendant G. DeRosset Lamar, as his executor, has held the said $23,844.88 in like trust; that, since the death of said G. B.

Lamar, and prior to the filing of complainant's said bill, said Richmond Importing and Exporting Company duly assigned to the complainant all its right, title, and interest, in and to the said 136 bales of cotton and the proceeds thereof.

Complainant then prays judgment for an accounting of the costs, charges, and expenses against said cotton, or its proceeds, and for judgment against the defendant, as executor, &c., for the balance, with interest. (Fol. 1 *et seq.*)

These allegations are generally denied by defendant's answer, on information and belief. (Fol. 6 *et seq.*)

General replication is filed. (Fol. 19.)

Proof.

The Richmond Importing and Exporting Company was incorporated by the State of Virginia, February 21st, 1863, "for the purpose of owning, navigating, and freighting ships and other vessels engaged in foreign and domestic commerce, trading from the ports of the Confederate States of America." (Fol. 59.)

This charter was amended, February 26th, 1864, by adding to its "purpose" that of "buying and selling the products and commodities so freighted or intended to be freighted." (Fol. 60.)

T. Edward Hambleton testifies that he knows the Richmond Importing and Exporting Company; that he was one of its originators, and its personal agent; that he knows the complainant, Charles F. McCay; that said McCay acted as purchasing agent, and had charge of cotton of said Company subject to his (H's) orders; that by his orders said McCay

shipped (he should think) five or six hundred bales of cotton to C. A. L. Lamar, at Savannah, Georgia, to be held subject to his (H's) orders; that said cotton was received by said Lamar, and reported by said Lamar at sundry times, to him; that he received from said Lamar all of said cotton except 244 bales; and that he never gave any orders for those remaining 244 bales. (Fols. 50 to 52.)

C. F. McCay testifies that he shipped about sixteen hundred bales of cotton, by Hambleton's orders, to Savannah, Georgia, and learned that it was delivered to C. A. L. Lamar. (Fols. 41 to 43.)

The cotton, the proceeds of which are claimed in this action, was taken from the possession of G. B. Lamar, at Savannah, Georgia, by the Government of the United States.

See G. B. Lamar's letter, fol. 28.
" " " Will, fols. 31-2.
" " " Advertisement, fol. 37.
" " " Accounts, fol. 22.
" " " Petition, fol. 100.
Deposition of Hambleton, fols. 127-8.
G. B. Lamar's Brief, 264-270.

G. B. Lamar commenced his action against the United States in the Court of Claims—for the proceeds of a large amount of cotton, including the 136 bales aforesaid, April 1, 1868.

See Petition and Amendments, fols. 89 to 106.
Will, fol. 32.
Brief, fols. 264-270.
Advertisement, fol. 37.
Extract from Accounts, fol. 22.

G. B. Lamar recovered judgment and received payment for this cotton during his lifetime, and set apart the $23,844.88 claimed in this cause, and *held it in trust for the owner.*

See Amended Petition, fol. 100.
Decree of Court of Claims, fol. 84.
Advertisment, fol. 37.
Accounts, fol. 22.
G. B. Lamar's Letter, fol. 50.

The defendant, G. De Rosset Lamar, as executor of G. B. Lamar, deceased, succeeded to that trust and is responsible under it.

See His Answer, fol. 15.
His Testimony, fol. 24.
G. B. Lamar's Will, fol. 32.

The right, title, and interest of the Richmond Importing and Exporting Company to said 136 bales of cotton, and its proceeds, were duly assigned to the complainant, prior to the commencement of this action.

See Assignment, fol. 83.
Testimony of Harrison, fols. 72, 82, 87, 88.

The defendant admits that he never paid over, and has refused to pay over, the balance of said proceeds demanded in the bill.

See His Answer, fol. 15.

The accounting directed by the Court below having been waived, it is stipulated and agreed between the parties that, under the opinion of the Court, the amount that the complainant is entitled to recover of the defendant is $26,410.72, and a decree for that

sum was entered below and execution ordered therefor.

See Opinion, fols. 276-286.
Stipulation, fol. 296.
Decree, fol. 288.

From that decree the defendant brings this appeal.

Points.

It would seem almost superfluous to attempt to add to the argument contained in the brief, but lucid and conclusive—opinion of the Honorable Judge who tried this cause below, which will be found at folios 276 to 286 of the Record. Since, however, it must be assumed that it failed to convince the defendant or his counsel, and that this appeal is brought in good faith, some amplification of that argument will be *pardoned* here, even though it be *not* necessary. Taking the points, in the order in which the learned Court discussed them, they are as follows:

First.

Were the 136 bales of cotton, the proceeds of which are claimed in this action, included in the recovery of G. B. Lamar against the United States in the Court of Claims?

It will hardly be seriously disputed by any one who looks into the Record—that Mr. Lamar *believed* he had recovered for them, nor that *he knew* better than any one else for just what cotton he *did* recover.

The proof is abundant, and *produced by the defendant*, that the original marks upon the bales were all obliterated when they were prepared for shipment from Savannah, so that they could never after be identified by their *original marks* or numbers; and that owners and claimants were absolutely prohibited, by military order and guard, from witnessing this obliteration and change, or taking any note of the new marks and numbers.

"The owners of the warehouses and of the cotton "were forbidden to approach to the warehouses or "to the cotton, or to the vessels by which it was "shipped, and *kept away by military guard sta-* "*tioned for that purpose*, and they were general- "ly denied all opportunity to identify their cotton "as it was shipped."

Deposition of B. H. Hardee, fols. 110–113.

"I know G. B. Lamar, the claimant—was not "present at the cotton seizure, for the reason that "*he was prohibited by a special order from being* "*present.* This was a *military order* and *enforced* "*by a guard.*"

Deposition of Joseph Ehlen, fol. 140.

No *attempt* was made, therefore, in the Court of Claims, to identify bales taken from Savannah, by the old marks; and, for the reason just shown, such a requirement would have been absurd and ridiculous, and compliance with it impossible. The only effort made was to prove the *number* of bales. This became so uniformly the rule that an average price was fixed by the Court for all cotton of the two classes, to wit: $231.79 per bale for Sea Island cotton, and $175.33 per bale for upland cotton.

See decree, folio 84.

Now, the proof, nowhere contradicted, is that there were 3,553 bales of cotton *shipped from Savannah*, belonging to G. B. Lamar.

See Exhibit H, folio 127.

But Mr. Lamar only *claimed* 3,275 bales as *taken from his possession in Savannah*, in his final amended petition in the Court of Claims.

See fol. 100.

And the Court awarded him *all he claimed*, as taken from his possession in Savannah, to wit, 3,275 bales.

See decree, fol. 82.

If he had *claimed* 3,553 *bales*, and been allowed by the Court for 3,275 bales *taken from his possession in Savannah*, there would be room to argue, at least, that he might have been mistaken in assuming that he had recovered for the 136 bales in question here; but, since in his amended petition, filed *only eleven days* before the cause was decided and the decree filed, he *claimed* only 3,275 bales as *taken from his possession at Savannah*, he must be presumed to have *known then* which particular lots of the 3,553 bales he *disclaimed*, and which bales he *claimed*.

But, immediately upon his recovery, he advertised for the owners of the 136 bales, in Richmond, and *charged himself, as trustee, for the proceeds upon his own books*, as we have shown, *supra*. What trustee succeeding him knows enough to negative this action? Certainly not this defendant, for he was asked (fol. 24, Question 15), "Do you know of your personal knowledge what cotton was included in said recovery by your father in the Court of Claims?"

Answer. "*I have no personal knowledge.*"

This is the defendant's testimony, taken on behalf of complainant, and no one is called on the part of the defence to contradict it.

Nor is this all. The deposition at folio 127, showing that 3,553 bales were admitted by the Government to have been taken from his possession at Savannah, was taken *February* 23, 1869, and in his possession on the 28*th day of September*, 1872, when he made his will (fol. 35). But, in his will, item 7, he mentions this 136 bales, and charges his executors to press his claim for the proceeds, and pay the net balance to the "*owner in Richmond.*"

Still further. In his Additional Brief (fol. 264 *et seq.*), he says:

"The petitioner claims for the several parcels of "cotton, taken by the United States Military offi- "cers from his possession. * * * *

"6th. For cotton advanced upon by him and by "his son, C. A. L. Lamar, which was taken from his "possession, as aforesaid, and for cotton advanced "upon by his son, and for expenses incurred there- "on by him."

NOTE.—The "additional brief by claimant" was put in evidence by the complainant in this case below, as Exhibit No. 2, on the examination of the desendant (fol. 24, Q. 14). His counsel's brief was put in evidence as Exhibit C. F. M., No. 4, and is the same as that at folio 253.

Afterward, when the defendant introduced the record of the case of Lamar *v.* The United States, in the Court of Claims, his counsel especially *ex-*

cepted this "Additional Brief by Claimant" out of his offer, as follows:

"Counsel for the defendant offers in evidence a "certified copy of the record in the Court of Claims, "in the case of G. B. Lamar *v.* The United States "(*excluding therefrom, however, the briefs offered* "*on behalf of the claimant in said case, copies of* "*which have already been offered in evidence by* "*the complainant*), and the same is marked 'Ex- "hibit Record Lamar *v.* The United States, J. A. S., "Examiner.'"

(Record, fol. 86.)

The copy contained in the Record, at folio 264, being excepted out of that exhibit by defendant's own counsel, is not to be treated as a part of the Record for the purposes of this cause. It would not be material to call the attention of this Court to the circumstance but for the fact that the copy as printed at folio 264, *et seq.*, is mutilated. The complainant's copy happened to be omitted from the Record sent up by the clerk on this appeal, and on the suggestion of appellant's counsel, it was agreed that both of the original exhibits should be sent up to this Court for its inspection, and they have been so sent.

The copy put in evidence by the complainant contained the matter printed below in italics, which is stricken out of the copy in the Record at folio 264, though complainant's copy was certified by the same clerk, nearly seven years earlier.

"Additional Brief by Claimant.

[*Exhibit L, No. 2, R. E. S., Exr.*]

"The petitioner claims for several parcels of cotton taken by the United States military officers from his possession, in the City of Savannah, in the months of January, February, and March, 1865, in violation of his rights of property, after he had taken the amnesty oath under the proclamation of President Lincoln, of 8th December, 1863:

"1st. *For cotton belonging to himself.*

"2d. *For cotton bought by W. W. Cheever on joint account, but wholly paid for by him (see A. S. Lawson's testimony, p. 41.*

"3d. *For cotton bought by W. W. Cheever on joint account with W. W. Cheever, C. A. L. Lamar, and himself, but paid for wholly by himself (see A. S. Lawson, p. 41), in which the other partners were interested in one-third of any profits that might be made.*

"4th. *For cotton bought and paid for by himself, in which C. A. L. Lamar, his son, was to have one-half of the profits.*

"5th. *For cotton bought and paid for by his son, in which he was half interested.*

"6th. *For cotton advanced upon by him and his son, C. A. L. Lamar, which was taken from his possession as aforesaid, and for cotton advanced upon by his son, and for expenses incurred thereon by him.*

"7th. *That he claims all the interest of both his deceased partners in the foregoing cases, both as*

"*surviving partner and as creditor in possession*
"*as regards both of them, and their decease is*
"*proven by A. S. Lawson* (*p.* 41), *and that the*
"*money for Mr. Cheever was furnished by*
"*claimant* (*p.* 43); *that Cheever was bankrupt*
"*and largely indebted to claimant, by same wit-*
"*ness* (*p.* 81), *and that there was a large de-*
"*ficiency growing out of these purchases* (*at the*
"*foot of p.* 81) *and a previous indebtedness also*
"(*at p.* 82) *upwards of* $100,000."

Now, several things are to be observed about this discrepancy in the two exhibits :

1st. There is nothing to show that G. B. Lamar *ever* made any such erasure, or crossing out. There is no initialing or note to show *who* did it, or why it was done.

2d. If it had been done by G. B. Lamar, or by his order, when the briefs were filed, no one would have been left *unmarked*, for they could not know which of the copies would fall into the hands of the Court, yet this copy is certified to have been filed, and others are on file still unmarked.

3d. That there are no corresponding erasures or marks in the balance of the brief, where special property in the different lots or parcels is particularized.

4th. The complainant's copy was certified nearly four years *before* the commencement of this action, and before it was even conceived of.

5th. The defendant's copy was certified nearly three years *after* this action was commenced, and more than *two years* after complainant's copy was put in evidence.

6th. The *occasion* for striking this matter out, as it is assumed by counsel now, *did not exist* until after Lamar's case had been decided in the Court of Claims, appealed by the United States, the appeal dismissed, and the *judgment paid*. The Court of Claims and Lamar and his counsel undoubtedly *then* relied on the cases of Klein and Carroll (13th Wall.), which they understood to sanction the recovery by virtue of such "special property" for the full value of the cotton, as shown by the judgment in Villalonga's case.

7th. Each page of the matter of the defendant's copy is procured to be signed by the clerk, to give show of greater care in certifying. But seven years is a long time—three years *or even two years*, is long enough—to enable a mutilated copy to be found upon the files. The form of the clerk's certificate to defendant's exhibit (fol. 273) is unique. It is a little too good and particular. It must have had some one connected with it who knew the use that was to be made of it. It is as follows:

"I certify that the foregoing printed and manu-
"script pages, *upon which I have written my name*,
"contain a true copy of the printed record in the
"aforesaid cause, *as the same appeared to the*
"*Chief Justice and Judges of the Court of Claims*
"*when the said cause came on to trial on the* 20*th*
"*day of May*, 1873."

The certificate on the copy which is in evidence, is as follows:

"I certify that the annexed printed pages con-
"tain a true copy of the additional brief for claim-
"ant *filed in said cause*, April 22d, 1873.

In testimony whereof I hereto set my hand and affix the seal of the said Court of Claims, *the 15th day of December, A. D.* 1875.

See original exhibit, with the Clerk of this Court.

In this "Additional Brief by Claimant" all the cotton claimed by him was specifically described in lots or parcels numbered from 1 to 28.

Lot or parcel "No. 26," in that brief mentioned, (fol. 270) specifically describes this 136 bales; and *no combination of those parcels from* 1 *to* 28, *inclusive, will make either* 3,274 *or* 3,275 *bales without including parcel No.* 26, *of* 136 *bales.*

Mr. Lamar's counsel say to the Court of Claims, (fol. 261): Mr. Lamar *only claims* 3,275 *bales stored in Savannah;* this discrepancy in his favor [against himself?] *he can explain, and would be glad of an opportunity to do so.*" So, then, they thought *he* was the only man who could explain what cotton he claimed. *They* could not do it, or doubtless they would have proceeded to do so without any apology. He *did explain* pretty thoroughly, when he got the money, that part of it belonged to the complainant's assignor, "in Richmond, Va."

When his counsel printed their brief and said Mr. Lamar could explain this discrepancy in his favor, of 782 bales, and would be glad to do so, Mr. Lamar's "additional brief" could not have been printed. There were only two briefs—that of his counsel, and that by himself, which latter could *only be* "*additional*" by being printed after that of his counsel.

According to their figures the discrepancy was not *in his favor* but *against him.* What they wanted him to have an opportunity to do was to explain how he made up the amount of 3,275 bales which he had finally claimed in his last petition. He did take this opportunity, therefore, after his counsel's brief was printed, in his "additional brief."

Now, how did he explain this discrepancy?

The first 25 parcels enumerated and described are as follows:

Parcel	No. 1	32	bales.
"	" 2	50	"
"	" 3	86	"
"	" 4	60	"
"	" 5	212	"
"	" 6	402	"
"	" 7	44	"
"	" 8	82	"
"	" 9	9	"
"	" 10	28	"
"	" 11	22	"
"	" 12	20	"
"	" 13	6	"
"	" 14	35	"
"	" 15	8	"
"	" 16	31	"
"	" 17	34	"
"	" 18	422	"
"	" 19	622	"
"	" 20	141	"
"	" 21	71	"
"	" 22	25	"
"	" 23	400	"
"	" 24	32	"
"	" 25	256	"
Total of 25 parcels,		3,130	"
Parcel No. 26		136	"
Total of 26 parcels		3,266	"
Parcel No. 27		426	"
" " 28		522	"
Total of the 28 parcels		4,214	"

But Mr. Lamar's footing is 4,222 bales, being eight bales more than the actual footing of the numbers at the head of each parcel, as above shown.

How is this discrepancy of eight bales accounted for? Plainly thus: an examination of parcel No. 28 (fol. 291) shows that the very last thing before his "recapitulation" begins, is, "and ALSO, eight bales marked B. W. B., bought of B. W. Bellamy."

It is plain that these eight bales were not included in "the 522 bales" placed at the head of the parcel. Looking into the deposition of B. W. Bellamy, on page 124 of the record we see that he sold Mr. Lamar 305 bales of cotton marked "B. W. B." all of which were delivered at station No. 17, of the A. & G. R. R., except 56 bales, which were *seized by Cabell*, but the 522 bales were seized by A. G. Browne, at Thomasville. This eight bales therefore, was a part of the Bellamy cotton delivered at the railroad station, which had reached Savannah.

Mr. Lamar's computations are all correct now, if we add this eight bales to the sum of the first 25 parcels, as shown above. For 3,130 then becomes 3,138 as Mr. Lamar has it in the margin at folio 270. Adding to the 3,138 bales the 136 bales, parcel 26, as he has it arranged in the margin, we have 3,274 bales, the amount which he has carried forward into his "recapitulation" at folio 272, when he says, "G. B. Lamar claims as taken from him 'in Savannah,' as per bill . . 3,274 bales."

Adding parcel 27 . .	426	"
And " 28 . . .	522	"
		"
We have the grand total .	4,222	"

Which is the same result Mr. Lamar reaches at the margin, folio 271. No other solution of this

brief by which to arrive at the number 3,274 is possible, and it is submitted that this is the true one. The lot of 8 bales should have constituted a separate parcel, or have been included in some other at the head, and then there would have been no difficulty in making out his calculation. But the disposition of the numbers in the margin at folio 270 shows incontestably that he included this 136 bales in the 3,274 for which he claims, and which he says was part of the 3,553 bales taken from the press warehouses. And the Court granted him what he claimed.

The discrepancy of one bale between the amount claimed in his final petition, and the claim in his brief cannot be accounted for on the record, but that does not disturb the real problem here as to the 136 bales.

The details of his calculation, by which he reached the number 3,275 for his petition are not given, so we cannot *verify them:* but we have the details by which he reaches the number 3,274, as shown above.

The lot of 136 bales *was*, therefore, undoubtedly included in the 3,275 bales, recovered for by Mr. G. B. Lamar in the Court of Claims.

Second.

Could the Richmond Importing and Exporting Company have recovered of the Lamars, or either of them, or of any one else, for this cotton or its proceeds?

We think the Court below has conclusively answered.

But, even if, as *matter of law* the proceed of these 136 bales *ought not* to have been recovered by Mr. Lamar, nevertheless, as *matter of fact* they *were recovered* for as shown above. Then, does it lie in the mouth of this defendant *trustee*, or "stakeholder," as his testator described himself (fol. 50) to set up such a plea to retain possession of this trust fund or "stake," being himself one of the beneficiaries in that event?

It will no doubt be claimed here, as it was in the Court below, with a zeal bordering on a loss of temper, that the "Richmond Importing and Exporting Company" was organized to aid in carrying on the "war of the rebellion against the United States and "cannot maintain any action in the Federal Courts "to recover any property which it lost while en-"gaged in that business."

Now, if the *law* of this proposition were *sound*, *still* it must fail to affect this case, because the facts are begged—the proof is otherwise than as assumed therein. Certainly no such fact, or object, or intention is fairly inferrable from the language of the "purpose" of this corporation as set forth in its charter. No such iniquity can be inferred from the fact that it bought cotton and stored it in the warehouse of the younger Lamar, in Savannah.

So far from being a corporation created by the Confederate States to aid in rebellion, the only direct proof in the record on the subject is found (fol. 53) where Mr. Hambleton, under Cross-examination by defendant's counsel, testifies as follows:

"Cross-Q. 15. Was not this one of a number "of corporations created by the Confederate Gov-"ernment, under arrangements to aid that Govern-

" ment in the rebellion, by exporting and importing " upon terms agreed upon between them ?

" A. *It was not.*

" Cross-Q. 16. Do you mean to swear that that " Company had no arrangements with the Confed- " erate Government as to terms under which it was " permitted to carry on business of importing and " exporting ?

" A. I mean to swear that *it was a private cor-* " *poration incorporated by the State of Virginia,* " and to the best of my knowledge and belief *never* " *had or made any arrangement with the Confed-* " *erate States whetever.*

" Cross-Q. 17. Then you mean to swear that you " had no permission from the Confederate Govern- " ment to run the blockade and enter and clear " from the ports—do you believe that to be true ?

" A. So far as the Company or corporation was " concerned, *I know of no arrangement save and* " *except that usually required in entering and de-* " *parting from port.* I never was called upon, as " agent of the same, to make the clearances ; they " were usually done by the Captains, as well as I " recollect.

" Cross-Q. 18. *Didn't you carry in your vessels* " *materials for the Confederate Government ?*

" A. My impression is, the latter part of the war " we were compelled to carry out a portion of our " cargo in cotton for the use of the Government ; " I am not positive on this point, as I was absent " in Europe during the last year, from December, " 1864 I think ; *we never carried anything into the* " *ports for the Government* to the best of my knowl- " edge and belief, but I think that a law passed by " the Confederate Government *made us carry on* " *one vessel, in which we owned one-fourth part, a*

"*proportion of cotton for them; our other vessels* "*were all lost prior to the passage of that act.*"

It is manifest that the words "we" and "our" in the first clause of the last answer quoted, refer to citizens of the Confederacy generally, or to the *state of the law*, and not to the conduct of this Company. As shown by the latter clause of the answer, the *company's* vessels were all lost *before that law was passed.*

Upon the evidence, therefore, the Richmond Importing and Exporting Company was a *private corporation*, chartered by the State of Virginia, with *no agreement to aid the rebellion;* that *never brought anything into the Confederacy for the Government; that never carried anything out of the Confederacy for the Government;* that was part owner in a vessel which it could not control, that was *possibly* compelled to carry out a portion of one cargo for the Government. And yet this company is arraigned *by its trustee*, as such a rebellious traitor and sinner that a Court of Equity should withhold its aid, and permit this faithless trustee to revel in its substance!

The Richmond Importing and Exporting Company clearly lost no property whilst engaged in aiding the rebellion, and neither it, nor its assignee is claiming for any. It, and its assignee have the same right to offer their prayers in a Court of Equity that any citizen of the Confederacy has. *Citizens* were conscripted into the Confederate service, but so far from being imputed to them as a crime, that fact only begot sympathy and commiseration for them among all loyal and patriotic people.

A vessel in which this company owned a small interest, putting the worst construction on the evidence, *was practically conscripted for one bit of service*—that is "the head and front of its offending."

Having shown conclusively, from the record, that the *facts* of the case do not fit the adversary's *law*, we do not deem it really necessary to look whether it is sound or not. It is submitted that the Court below found righteously on the second point, upon the foregoing grounds.

But it is held, as a matter of law, that corporations created by the legislatures of States in rebellion *may* maintain actions in the Court of Claims.

"It is no objection to them [such corporations] "that plaintiffs in all cases are required to make "proof that they have never given aid and comfort "to the rebellion. Such proof may be made as "well by artificial as by natural persons. Corpo- "rations may have rendered very substantial aid to "the armed resistance of the United States. They "may have made loans to the Confederate Gov- "ernment. They may have even fitted out compa- "nies or regiments. *If they have rendered no aid* "*the fact is quite capable of proof.*"

United States *v.* Insurance Co., 22 Wall., 99, and other cases.

There is no evidence in this case even tending to show that it ever gave any aid or comfort to the rebellion, except what might be inferred from a part of the "purpose" of its charter. Against that feeble inference is the *positive*, and uncontradicted testimony of Hambleton, *supra*, that it *never did render any such aid or comfort.*

The company, therefore, *might have* recovered for this cotton in the Court of Claims, and paid Lamar his charges and advances. On the other hand, Mr. Lamar *in fact* recovered for it—charged himself with the portion of the company as trustee—offered to pay it over on proof of ownership—and shall it not be done?

Third.

Is the failure to prove that the defendant's testator *acquired possession* of this 136 bales of cotton and its proceeds *exactly as laid in the bill* a fatal variance?

For the purposes of the discussion of his point, at least, it is not to be disputed, but that he actually had possession of the funds, and that he charged himself with them as trustee or "stakeholder." He advertised for the owner in Richmond. He would have delivered them to the claimant on proper proof of ownership. He charged his executor, as his successor in trust, to do the like. When he refuses, will not a Court of Equity, the special guardian of trusts, compel him to do his duty?

It is shown that if Mr. G. Lamar were *not in law* the executor of his deceased son's estate, he *was in fact in possession*, as the agent or attorney of the deceased son's widow and executrix. But whether as surviving partner (opinion below, fol. 283 and 264*a*), or as agent of the executrix, he was actually *and legally in possession of the cotton as bailee.*

At the time G. B. Lamar's case was tried in the Court of Claims, that Court and the profession understood the law to be that under the captured and

abandoned property act an executor, administrator, or factor having a lien for advances, &c., from whose possession cotton had been taken by the government, might swear that he was the "owner" within the meaning and intention of that act. The bar argued, and the Court held, on the authority of Carroll's case (13 Wall, 151), that such was the law. The Court of Claims, in Villalonga's case, so held, distinctly upon the authority of Carroll's case, and gave judgment in his favor for the full amount of a large lot of cotton upon which he had a lien for $50,000 advances. Lamar's case was decided about the same time. Both cases were appealed to this Court. The appeal in Lamar's case was dismissed, and the *judgment paid*, before Villalonga's appeal was heard, so that the rule laid down in the latter case did not govern Lamar's case.

He claimed, as we have shown, on the "special property" he had in the cotton in question, and recovered the full amount of its proceeds. He had only an *absolute* right to *his* charges and advances. This Court, in Klein's case (13 Wall., 129), decided that the government held these proceeds as trustee, and "it was for the government itself to determine whether these proceeds should be restored to the owner or not." The government did determine to restore, and did restore the proceeds in question here. G. B. Lamar treated them in good faith as a trust fund for the owner when found, less the amount of the lien. He dedicated them to that use on his books. The appellant seeks to convert them, and refuses to execute the trust. Now, it is maintained, as held by the Court below, that it is immaterial how we trace the funds to his possession. The fact that we prove them in his possession is the material one. The statement in the pleading, of the

mode or manner in which they were acquired is mere matter of "inducement." No claim is made in the bill as against the estate of C. A. L. Lamar. The claim is against the individual in whose hands the funds are found upon the rule so plainly and broadly laid down by this Court in Cook *v.* Tullis (18 Wall, 241), where it is said that:

"It is a rule of equity jurisprudence, perfectly "well settled and of *universal application*, that "where property is *held upon any trust* to keep or "use, or invest it in a particular way, is misapplied "by the trustee, and converted into different pro- "perty, or is sold, and the proceeds are thus in- "vested, the property may be traced through its "transformations, and will be subject, when found "in its new form, to the rights of the original "owner or *cestui que trust*."

Defendant's testator, as we have shown, received the proceeds of this cotton, charged with a trust for his son's estate, to the amount of his son's advances, &c., and another trust for the owner for the balance, less his own proper costs and expenses. That distribution is the task set to this defendant by his testator (fol. 33), and equity must see to it that the task is performed.

Fourth.

Is the assignment by the Richmond Importing and Exporting Company to the complainant sufficient, and sufficiently proven, to enable him to recover on it in his own name?

It would seem useless to add to the reasoning of the Court on this point (fol. 282), but for the fact that it seems really to be contended by the defense that this question must be answered in the negative.

In Mead *v.* Keeler (24 Barb., 24), the Supreme Court of New York, citing many cases for the doctrine, says:

"It is to be presumed that a corporation will "conduct their operations in detail substantially "upon the same principles, and in the same "manner as individuals engaged in the like business. "And when they do so, and confine themselves to "the purposes and objects of their incorporation, "they should not be deemed as transcending their "authority, but should be regarded as acting with-"in the scope of those implied, incidental powers "necessary to the full and advantageous develop-"ment of those which are expressly given."

The Richmond Importing and Exporting Company, as we have seen, was chartered "for the pur-"pose of owning, navigating, and freighting ships, "and other vessels engaged in foreign and domestic "trade, and *buying and selling* the products and "commodities so freighted or intended to be "freighted." (fol, 60).

The company, therefore, had the right and power to *buy and sell* cotton, and, by the same token, to dispose of the proceeds of its cotton, or any other product or commodity.

Now, how do individuals transact this kind of business? Certainly, it requires no *deed*, nor any instrument under seal, nor an instrument with a subscribing witness to pass title to a bale of cotton, a *chose in action*, or any chattel. Even a judgment may be assigned by parol.

Ford *v.* Stewart, 19 Johns., 342.

In Gibson *v.* Warden (14 Wall, 247) this Court had under consideration two chattel mortgages, made at Cincinnati, Ohio, which were signed by one

partner for the firm, and purported to be sealed and attested. It is held that

"Such instruments in Ohio are usually under "seal. But the term mortgage used in the "statute does not import or imply the use of "a seal. In regard to chattels it is a mort- "gage, and not a *deed* of mortgage that is required. "The distinction between real and personal pro- "perty, and between the means which are ne- "cessary to affect them is well settled. Personal "property at common law *could always be trans- "ferred or incumbered without the use of a deed "for that purpose. A seal has never been held ne- "cessary to the validity of a bill of sale.* A "chattel mortgage is only a bill of sale with a de- "feasance incorporated in it. The presence or ab- "sence of that *formality* is wholly *immaterial. In "the case before us it may be regarded as sur- "plusage.*"

If, in the case just cited, the "immaterial formality" could be regarded as "surplusage," then why not in the case at bar now?

If the assignment (fol. 83) had been neither sealed nor attested, there would be no pretence from any quarter that it was not sufficient and sufficiently proven. Treating these "immaterial formalities," then, as "surplusage," it is confidently submitted that the paper is sufficiently proven.

Mr. Harrison (fol. 72) testifies: "I was president of the company;" and (fol. 82), "The signatures, my own as president and director were both written by me; those of Thomas W. McCauce, Andrew L. Ellet and J. L. Apperson are, in my opinion, genuine. *I have often seen them write.*"

He also says (fol. 72) that the company assigned the claim in question to the plaintiff, Charles F. McCay.

This Court further says, in the case last cited: "There is another view of the subject not to be "overlooked. There is proof in the record that "the partners, other than Robert Moore, author- "ized him in advance to execute the mortgage, "and after its execution, with full knowledge, "acquiesced in what he had done. *If the law* "*had required a seal these circumstances would* "*have made the instrument the deed of the firm*, "as much so as if all the members had been *per-* "*sonally present* and *assented to its execution in* "*that form.*"

Now, the charter of this company provides (fol. 60) that "The affairs of the company shall be managed by a president and board of directors." The instrument itself (fol. 83) and the testimony of Hambleton and Harrison show that the president and all the directors living (one being dead) signed the instrument in due form. The testimony further shows (fol. 88) that the records of the company and its seal were destroyed by fire in 1865, and that the director Harvey is dead.

It would doubtless be impertinent to cite authorities or text-books in this Court that when the regular, legitimate, and ultimate act of a corporation appears to be within the scope of its power and regular in form, the presumption is that all necessary preliminary matters have also been regularly attended to and performed, and the burden thrown upon the attacking party.

If, then, in the case cited, the conduct of the *partners not signing* be sufficient to charge them the same "*as though they had been personally present and assented*," since all the parties necessary to any supposed action not apparent upon the face of the assignment necessary to give it

effect (such as passing a resolution, improvising a seal in place of the burnt one, and the like) in the case at bar, were actually present and signed the instrument, are we not entitled to assume that they did whatever was necessary to effectuate their plainly expressed will? They had the right and power to do what they *did* do, and anything else the company could do within the scope of its power. It has been shown that what they did, or certainly attempted to do, was within the scope of their authority—they were not under duress—they freely intended what they did do to be effectual (fol. 72)

Shall their trustee, in the teeth of the settled law of such transactions, be permitted to annul their will, to his own profit, with the sanction of the special guardian of trusts?

It is maintained that in deeds of corporations their seal dispenses with the use of subscribing witnesses, and for this reason, also, in the case at bar, the subscribing witnesses must be regarded as surplusage. Where subscribing witnesses are required by the statutes of the different States, their absence has never been held to invalidate a deed. The recording officers usually refuse to record them without subscribing witnesses, but no Court ever set one aside, so far as we are advised, because it had no subscribing witnesses.

The corporate seal imparts its own verity, and puts the burden upon the party attacking it.

Potter on Cor., Vol. I., secs. 37, 38, and 39, and notes, and cases cited.

It is further submitted, that even if the assignment be treated as an instrument under seal, and attested by a subscribing witness, and without

"surplusage," it still is sufficiently proven for the purposes of this trial.

The former rigidity of the rule requiring proof by the "subscribing witness" was doubtless founded on the principle of the disqualification of a witness on the ground of interest. This is shown by the fact that even a "subscribing witness" was thus disqualified unless his interest was shown to have been *fraudulently acquired for that purpose.* The growing exceptions to the rule show that it is soon to be discarded altogether, with the reason which created it.

"A *fifth* exception to the rule requiring proof "by the subscribing witness is admitted where "the instrument is not directly in issue, but comes "incidentally in question in the course of the "trial; in such case the execution may be proved "by any competent testimony, *without calling "the subscribing witness.*"

Greenleaf on Evidence (13 Ed.), Vol. I., Sec. 573*b*.

Commonwealth *v.* Castles, 10 Law Rep. (N. S.) 411.

Curtis *v.* Belknap, 21 Vt., 433.

The test by which this exception can be applied is very simple. If the instrument should contain an *executory contract*, and the action were to compel its performance, the rule would require the production of the subscribing witness; but where the instrument is merely the *evidence of a completed transaction*, as in this case, it is *but an incidental piece of documentary evidence*, and may be proved by any competent witness.

The parties to this instrument are not disputing or contending about it—they are content with their performance of it, and under it. Can their trustee or stakeholder question it, or the method of its proof ?

Curtis *vs.* Belknap, *supra*, was an action of assumpsit. The plaintiff alleged, in the third count of his declaration, that on the 7th day of December, 1846, he agreed with Thompson and Kent, by contract in writing, that he would deliver all the stone required for certain work upon the Vermont Central Railroad, &c. On the trial, the plaintiff, to prove the contract between himself and Thompson and Kent, called the said Thompson as a witness; but, it appearing that there was a subscribing witness to the contract, the defendant objected that the execution of the contract could only be proved by the testimony of such witness. This objection, Redfield, J., presiding, was over-ruled and defendant excepted. On error to the Supreme Court the ruling was sustained as follows :

"The objection made in this case to proving the "execution of the contract between the plaintiff and "Thompson and Kent, is one that *has been many* "*times held by this Court to be ill-founded*. That "contract was *only an incidental question here*. "The parties to *this* contract had never constituted "the subscribing witness to *that* contract the ex- "clusive witness to *their* contract. *Nor could it be* "*well argued that the subscribing witness to any* "*contract could ordinarily know more about the* "*contract than the parties. It seems to involve an* "*absurdity that the parties should not know all* "*about their own contract.*"

Where the rule that interest disqualifies a wit-

ness has been abolished, and parties are permitted to testify, the application of this rule compels the violation of another, and a much more important one, to wit: That which requires the best evidence of which the case is susceptible. Perhaps the rule ought to be abolished altogether, except in the case of wills, where the witness is a legatee. In any event, the law, as it stands, offers no impediment in this case.

In addition to the foregoing, the Revised Statutes of Virginia, (1849), Chap. 98, §85, provide that:

"Every written instrument is presumed to be gen-"uine if the party purporting to have signed it be "living, *unless he will deny the signature on "oath.*"

The Richmond Importing and Exporting Company is a Virginia corporation, the parties who signed this instrument are shown to be living, and the record contains no such denial of their signatures. This may be regarded as a law of the forum, however, and to have no extra-territorial application.

But upon the whole case made, it is confidently submitted that the assignment must be held to be sufficient, and sufficiently proven.

The four principal questions raised below, and treated of in the opinion of the Court have now been discussed; but it is maintained:

Fifth.

That even if the original transaction between the Richmond Importing and Exporting Company and the Lamars were so obnoxious to the law, and so vicious, that the Courts would not adjudicate upon it between them, still *this* action, being founded on a *new promise* and a *new consideration*, not immediately connected with the original contract, is maintainable, and the judgment should be affirmed.

A leading case on this branch of the law is Armstrong *vs.* Toler, (11 Wheaton, 258). Not by any means because it is one of the oldest, for it is not; but because of the eminent counsel who argued it, the multitude of cases reviewed in it, and the eminence of the Court who heard and determined it.

The case was argued for the plaintiff in error by Mr. Webster and Mr. Wheaton, and for the defendant in error by Mr. C. J. Ingersoll. The opinion was written by Chief Justice Marshall.

It is difficult to cite portions of it satisfactorily, yet it is not deemed necessary to reprint the whole case here. The attention of the Court is respectfully but earnestly solicited to a careful consideration of it, with confidence that it, and the cases cited there, must work an affirmance of the judgment below in this case.

The general doctrine affirmed in Armstrong *vs.* Toler is that:

"Where a contract grows immediately out of,
"and is connected with an illegal or immoral act,
"a Court of Justice will not lend its aid to enforce
"it.

"But if the *promise* be entirely disconnected
"with the illegal act, and is founded on a *new con-*
"*sideration, it is not affected by* the act, although

"it was known to the party to whom the promise "was made, and *although he was the contriver and* "*conductor of the illegal act.*"

Now, if the Richmand Importing and Exporting Company were really guilty, as claimed by the defendant, neither he nor his testator's estate would be permitted to profit by the wrong. The consequence would have been the confiscation of the company's property. Its property was in fact, seized by the Government, in the hands of the defendant's testator, sold, and the proceeds paid into the treasury, *confiscated*. The defendant's testator, by virtue of his special property in the cotton, actually recovered for and received the money—"the proceeds"—from the treasury of the United States, where it had been confiscated. And this in an action wherein the United States was a party, in a forum of its choice, *and upon notice that he was claiming on this special property*. See his brief (*ante*, p. 11).

It is maintained that this confiscation and surrender of the proceeds purged them of their infirmity, *if they ever had any*, and landed them in the hands of the defendant's testator, pure and uncontaminated coin of the United States, in trust for the complainant's assignor, less the proper charges, advances, and expenses thereon.

Here is a *new promise* of trust, on a *new consideration*, *without any vice in either*—the one from the hand of the Government, and both with its solemn judicial sanction and judgment. We repeat that the defendant's testator so *avowed*, *claimed*, *recognized*, and *treated* the transaction. Can a Court of Equity say that the successor trustee may violate the trust thus sacredly and solemnly put upon him by the Government and his deceased father, to his own gain?

In Armstrong *v.* Toler, Turner *v.* Russell, *et al.* (1 Boss. and Pull., 295), is approved, wherein Chief Justice Marshall says:

"It was held that if A. is indebted to B. on a "contract forbidden by law, and pays the money "to C. for the use of B., a Court will give judgment "in favor of B. against C. for this money. In this "case B. could not recover against A., but when "the money came into the hands of C. a *new promise* was raised on a *new consideration, which was "not infected with the vice of the original contract.*"

Now, let it be granted, *exempli gratia*, as the defendant claims, that the Richmond Importing and Exporting Company could not have recovered against the United States. We have demonstrated that G. B. Lamar, the defendant's testator, *did recover* of the United States, in the Court of Claims, *for its use.* He stated to that Court that he was claiming by virtue of his special property (*ante*, p. 11); when he recovered he immediately advertised "in "Richmond," for the owner "to come forward, pay "the advances, the expenses of collection, prove "his ownership, *and receive the balance due*" (fol. 37). He charged the defendant, in his will to execute this trust, *for the money was received and dedicated to this trust before his decease* (fol. 22).

Have we not here a *new promise*, on a *new consideration, not infected with the vice* of the origiual contract? And still again we ask, will a Court of Equity hear this trustee say "the complainant could not have recovered this money, and I propose to keep it, to my profit $26,410.72?"

"Nothing else was left to him. It was conceded, "on the trial in the Court of Claims, that G. B. "Lamar knew better than anyone else, not except- "ing his counsel, whom he had instructed, what "cotton he was claiming for, and for what cotton "he recovered, and it *must* require twisting and "turning for his executor to get out of that position "now."

Mr. Lamar was a man of more than ordinary ability, integrity, and care in the management of his affairs. He had large business experience as a banker, dealer in cotton, and otherwise. He was familiar with all the details of his business and accounts; and made the entries in his books concerning the funds claimed here himself (fol. 23). In considering all his statements and admissions these facts should be borne in mind.

First Issue.

Turning to the "first issue," as presented by counsel, on p. 8 of his argument, we find him urging that the bill is framed and prosecuted on the theory that G. B. Lamar held the fund in dispute as executor of his son, C. A. L. Lamar. This is not true.

Mr. Lamar is nowhere in the bill charged as the "executor" or "administrator" of his deceased son's estate. He is described as the legal representative of his deceased son; and so, in a sense, he was. The son's widow was executrix of his estate, but his father was in actual possession, and did the business, so far as this particular transaction is concerned, at least. This is shown by his two letters

to Harrison and Apperson, who were the President and Secretary, and Directors, of the Richmond Importing and Exporting Company, (Exhibits 5 and 6, p. 21.)

In the first in point of date he says: "But you "will excuse me for saying that the proof must be "explicit and ample, as *I am acting for my son's* "*estate, with four daughters and an executrix to* "*satisfy*, as well as myself." And in the next: "It is desirable that whatever is done should be "done promptly, as I am only a STAKEHOLDER, "and *must account soon to the executrix* of my "son's estate:"

The detail of the manner in which Mr. G. B. Lamar got possession of the cotton first, and afterwards of the proceeds, was, as the Court below very properly held, (fol. 284) matter of "*mere inducement*," in the language of pleading, for the purpose of tracing and identifying the funds, and it is submitted that the proof sufficiently follows the theory of the bill to warrant the recovery adjudged below.

Counsel also complains that the bill was in part for "discovery," but *discovered* nothing, and therefore should be dismissed. It was no fault of the bill that it discovered nothing. It was aimed in the right direction, for, as Mr. Lamar stated, and as the fact was, he was acting for his son's estate, and nothing but the destruction of the books or their seizure by the Government, defeated the discovery sought. But that could not render the bill improper, or defeat it.

It is insisted, therefore, that on this ground, at least, the suit is not vulnerable. (See, also, **Point Third,** *ante*, p. 23.)

Second Issue.

Here counsel argues that defendant's testator did not claim or recover the proceeds of the 136 bales of cotton demanded in complainant's bill, basing the argument mainly on a pretended analysis of the various petitions in the Court of Claims, and the brief of his solicitors in that Court; and particularly on the ground that G. B. Lamar claimed as "OWNER." This proposition has already been discussed under the **First Point** (*ante* p.6). After correcting a few of counsel's assumptions and misstatements we will see how much substance there is in his pretended argument that because Mr. Lamar swore he was "OWNER," therefore he did not claim for the proceeds of the 136 bales in question.

1st.—Much ado is made by counsel, under this issue, about the name "Holland" in the second amended petition, in the Court of Claims (fol. 96.)

This amended petition is not sworn to by any body; it is superseded by a later one sworn to by Mr. Lamar himself (fol. 100); and whenever Mr. Lamar spoke of this "gentleman in Richmond, Va.," he called him "Hambleton."

He is described by Mr. Lamar as "Hambleton, agent, &c," (fol.28); and he is afterward inquired for by him as "your Mr. Hambleton," (fol. 38), showing that Mr. Apperson, who was one of the Directors, and Secretary of the complainant's assignor, had mentioned Hambleton, in his correspondence with Lamar, as the agent of the Richmond Importing and Exporting Company, as Hambleton himself swore he was (fol. 50, Q. 2.)

It is clear, therefore, that Mr. Lamar would not have made this mistake of "Holland" for "Hambleton;" and it is equally clear that it was *only* a

mistake of his solicitors, made in his absence. Certainly no further notice need be taken of this matter.

2d. He quotes (p. 13), from the brief of the Solicitors in the Court of Claims, "Mr. Lamar only claims 3,275 bales *stored in Savannah*. This discrepancy *in his favor* of 782 bales he can explain, and will be glad of an opportunity to do so," and adds: "So far as it appears the Court never asked him for that explanation, inasmuch as it was a *concession made by himself*, and *it never has appeared in the case*."

Here are two manifest errors, on the theory of the appellant. If, as counsel claims, Lamar had more than 3,275 bales in Savannah, then the discrepancy was *against him;* and next, it is not true that this explanation "has not appeared in the case." We have shown under the **First Point**, (*ante. p.* 15), that the "explanation" was in Mr. Lamar's "additional Brief," and that that brief was made for the express purpose of showing, as it clearly does, just what lots of cotton he claimed in his final petition. He there states that this 136 bales are a part of the 3,553 bales taken from the press warehouses, as reported by the quartermaster (Ex. H., fols. 127-8).

That this latter amount of cotton was taken is not disputed. That the 136 bales were included in it Mr. Lamar solemnly admits, over his own signature, in his additional brief. This admission on the record is better than the general proof in that case, and *estops* the appellant here, as it would have estopped his testator if he were defending this suit in person.

3d. Counsel (p. 11), quotes from the 2d petition, *sworn to by his* solicitor Peck *on information and belief*, that 4,185 bales were stored in Savannah; and from the 3d petition, sworn to by nobody, that the whole 4,185 were stored in Savannah, and proceeds to argue upon these *assumptions* seriously, and says (p. 13), "*in the substituted petition made by* "*Lamar himself, who knew the facts*, he reduces "his claim for cotton of which he was the absolute "owner, and which was in the city of Savannah, to "3,275 bales, from 3,793 bales set forth in Denver & "Peck's petition: thus throwing off 518 bales in the city of Savannah."

This is either juggling with or deliberately deceiving the Court. Mr. Lamar never claimed 3,793 bales stored in Savannah. Instead, therefore, of saying he "threw off 518 bales," he should have stated, if he meant to deal fairly with the record and with the Court, that he *thereby corrected his s licitor's error* of 518 bales," &c.

4th. Speaking of the lot of 136 bales, at page 14, he says: "If, therefore, it is to be found in the "3,275 bales for which Mr. Lamar recovered a "judgment, it must be in the 628 *bales which in* "*his petition he swore he owned himself, free from* "*any claim by any person whatever.*" Here is a "*bold assumption.* No such parcel is mentioned, and no such oath is taken in his petition.

After thus manufacturing premises, and simply jumbling them up for several pages, with an air of seriousness that would become a synagogue, he closes the discussion of his second issue as follows:

"It is apparent, therefore, from an inspection of "the record, that Mr. Lamar *did not sue* for the

"136 bales," &c. Any other conclusion he may ever want to draw on any other subject will follow about as fairly from the premises.

Mr. Lamar himself swears, in his first petition (fol. 89), that he "was the *owner* and in *possession*" of 4,185 bales of cotton * * * of which 3,275 bales were stored in Savannah." Nothing is said in this first petition about his "special property," in any of these 4,185 bales—yet he swears he was "owner," as it was understood a claimant might, under the statute, down to Villalonga's, case in 1874.

In the second and amended petition (fol. 92), his *solicitor* swears he was "*owner* of 4,185 bales of "cotton * * * stored in the City of Sa- "vannah." No mention is made of any "special "property" in any of the 4,185 bales in *this* petition; and it is now conceded on all hands to have been a mistake to lay the whole 4,185 bales in Savannah.

In the third petition, signed by his solicitors, but not sworn to by anybody, 4,185 bales are still claimed, and again the conceded mistake is made (fol. 87), of laying them in Savannah.

Here we have the first mention of "*absolute* "*owner*" and "*special property.*" This petition was filed April 16, 1872 (fol. 96), and the cases of Klein and Carroll (13 Wall., Dec. Term, 1871), had just been decided. This phrase, "*special property,*" was evidently borrowed from the language of this Court in Carroll's case.

Of the 392 bales in this third petition stated to be "held as a commission merchant," and "on "which he had made cash advances," 256 bales are specified again in his final petition and sworn to by

himself as "OWNER." The 136 bales here mentioned as "held on account of one ——— Holland, "of Richmond, Va.," are not again specified in his final petition, but the name "Holland," as shown above, is simply a mistake of Lamar's solicitors, made in his absence, for "Hambleton, agent, etc.," as he was known to Mr. Lamar.

In the 4th, and final petition, sworn to by Lamar himself, the amount of cotton claimed for is, for the first time, reduced from 4,185 bales, and placed at 3,701 bales, but again *he* lays only 3,275 bales of it in Savannah, and the remaining 426 bales near Tallahassee, Florida.

But here, again, he swears he is the "OWNER, "and in possession" of the whole 3,701 bales, and then goes on to explain (page 60), that he is not the "*absolute owner*," as he was designated by his solicitors in the 3d petition, but only a partner with different interests in various parcels, including the major part of it. And yet he swears he is "OWNER," and from this fact counsel argues that he did not claim for the proceeds of the 136 bales, because it is conceded he did not OWN them absolutely.

It is respectfully submitted that *this argument of counsel for appellant is absurd*, and that no such conclusion can be fairly drawn from this analysis. Mr. Lamar's oath as to ownership was consistent with the law as then administered by the Court of Claims, for this final petition was filed only 12 *days* before the case was decided, and a despatch just now received from the Clerk of that Court shows that Lamar's case was decided on the same day with Villalonga's case, to wit: June 2d, 1873 (fol. 84). And the record of the latter case shows (23 Wall., 35), that the case was decided on the authority of Carroll's case, and awarded Villalonga the full proceeds of cotton upon which he had made

advances. Villalonga's case was sent down for correction, making a new rule, and Lamar's judgment was paid.

It does not follow, therefore, that because he was "*owner*" he *did not sue* for these 136 bales. *He did sue for them.*

Third Issue.

As counsel correctly says (p. 14), the bill alleges that Mr. Lamar did recover for the 136 bales, and the answer denies it. That is the *third issue*, as he eliminates it.

If anything can be *demonstrated* to be true upon the record in this case, the proposition that he *did* recover is so treated under the **First Point**, commencing at page 15, *ante*.

In his discussion of this issue counsel treats us to another catalogue of wholesale assumptions, exaggerations, and perversions. Life is too short, and space here too limited to correct them all, and attention to a few of them must suffice.

1st. He says (p. 15): "*Every bale of cotton for which Mr. Lamar recovered is traced and identified by witnesses.*" Now, this statement is simply untrue.

It is shown that Mr. Lamar bought a large amount of cotton which is traced to Savannah. How much, no two statements of Mr. Lamar's solicitors in the Court of Claims or his counsel here agree in determining. In Savannah, as we have shown elsewhere (*ante*, p. 7) all original marks upon the cotton were obliterated and *new* marks supplied; and this was done by "*military order*," under protection of a "*military guard*," for the

avowed purpose of *defeating any such tracing as is here claimed.*

It is shown (fol. 15) that Mr. Lamar sold 2,500 bales of this cotton to the Importing and Exporting Company, of which he was president, but *which* 2,500 bales he thus sold *no attempt is made to show.* Mr. Lamar, the only man who could have given any intelligible statement on the subject, was not permitted to testify; and we only have his *admissions* in his brief. No other feature of his brief *has any force as evidence*, however much it may aid by way of explanation. And fortunately for the cause of justice, his *admissions* are truthful, candid, and conclusive, as we have shown.

Counsel one moment says "LAMAR KNEW THE FACTS" (p. 13); next (p. 23) "Mr. Lamar's brief, *however, is true in every fact*," then (p. 29) Mr. Lamar SUPPOSED that some bales of cotton marked 'X. Y. Z.' and 'E. T. A.,' were the cotton inquired about by Harrison, Goddin and Appersen;" and, at page 32, "It is manifest, *beyond the possibility of doubt*, that Mr. Lamar *was* MISTAKEN when he published this advertisement, in supposing that he ever had collected for any cotton *except that of which he was absolute owner.*"

To such measure of "twisting and turning" is he driven to get rid of the consequences of the honest, candid, truthful statements of the *dead man* "*who knew the facts*," and whose brief containing them "IS TRUE IN EVERY FACT!"

2d. He says (p. 15) "A convenient way to follow that testimony *is to take the brief of Hughes, Denver and Peck*," &c. What he proposes to do by the aid of their brief, is *to show just what cotton Mr. Lamar did finally claim.* The *authors of it*

themselves, in effect, *confess their inability to do so*, and inform the Court that the man who, according to counsel's argument, has *made all the mistakes*, is the *only man who can* (fol. 261). The *average* intelligence would be likely to conclude that to put one's self in charge of a guide who *confessed* he did not know the way was "a convenient way" to get *lost*. Not so with counsel for appellant, for we dare not charge him with deliberately sending the Court astray.

3d. On page 17 he says: "At any rate, there is "no pretense by anybody that these 136 bales "ever were purchased by G. B. Lamar, or ever were "consigned to him; or that they were in his pos- "session, otherwise than that 136 bales were stored "in one of his warehouses, along with other "people's cotton, when the Government seized the "cotton in it. *How they got there does not* "*appear.*"

True there is no pretence that these 136 bales ever were purchased by or consigned to G. P. Lamar. But what of that? How about the way they *got into his possession?*

Hambleton and McCay swear that they shipped several hundred bales of the company's cotton to C. A. L. Lamar, at Savannah, to be compressed, and held subject to Hambleton's order; that C. A. L. Lamar reported the receipt of the cotton; and that Hambleton gave orders for all of it except 244 bales (fols. 50 to 52 and 41 to 43).

C. A. L. Lamar died (fol. 146), and G. B. Lamar acted for his son's estate (Exhibit L. No. 6, fol. 38).

"They were *rebagged* and *compressed for the* "*owner*. The owner made inquiry for them since the war."

"They were taken from the press warehouse, "and from my possession, and constituted part of "the 3553 bales," (fol. 270).

When "the owner inquired for them since the war" he was told that they were marked "X. Y. Z." and "E T. A." (fol. 28). Why was he so informed? Because they had been "*rebagged* and compressed." The initials of the planters, which are always the original marks on cotton, were taken off with the old bags, and being no longer necessary, new and arbitrary marks were put on *at the press* to designate the cotton, of which new marks the owner knew nothing until thus informed. Mr. Lamar knew these marks, but *they* were removed by the military (*ante*, p. 7) *and* so further identification was impossible. "*The more they were mixed the better*" (fol. 113).

Mr. Lamar, the man who "KNEW THE FACTS," who is truthful "*in every fact*," advertised for the owner in Richmond, (fol. 37) and in his lifetime set apart the whole of the proceeds, upon his books, there to remain as a trust fund until the owner was found, and distribution arranged (fol. 22).

Does it not "appear" beyond the dignity of a *pretense*, how G. B. Lamar *got possession of these* 136 *bales*? And does it not also appear that he recovered the proceeds?

4th. Counsel's argument based upon the judgment in the Court of Claims proceeds upon the *assumption* that Lamar could only recover for cotton of which he was *absolute owner*, and did recover for no other. This has been shown (*ante*, p. 13) not to have been the state of the law, as understood by the Court of Claims, at the time the case was decided. The law, as he assumes it, was announced, as we have also shown, *after this judgment was paid.* In Villa-

longa's case, decided on the same day with Lamar's, the *Court of Claims* allowed him for the full value of the cotton on which he only had such a lien as Lamar asserted against these 136 bales (23 Wall., 35). The bad faith of this contention is heightened by a fact which does not appear in this record, but which is known to counsel for appellant, and everybody else connected with this case, that in Mr. Lamar's lifetime he adjusted and distributed the proceeds of the 256 bales of Martin cotton, mentioned at folio 105, in the final petition, and which was "held by a commission merchant, on which he had made cash advances" (Appl's Brief, p. 11).

5th. On page 22 of his brief, he repeats his *assumption*, "that by law, he [Lamar], could not "have recovered out of the proceeds of cotton seized "by the Government for money advanced upon it by "his son *under any circumstances.*"

This is worse than the last one considered, if possible, for it is broader. Such advances were never uncollectible in the Court of Claims, and are not now. Under the rules laid down in Klein' case, and Carroll's, and even in the later case of Villalonga, they are collectible, and collectible *by him* on the doctrine of the two former cases. He is shown in the record not to have been in any of the classes excepted out of the amnesty (fol. 183), and he took the oath of allegiance (fol. 138).

U. S. *v.* Klein, 13 Wall., 129.
U. S. *v.* Carroll, 13 Wall., 151.

6th. Speaking of the matter stricken out of the "additional brief," (p. 23), he says: "*of course it was stricken out by the lawyers.*" This is a pure gratuity. The record does not show by whom it was

stricken out. But suppose it was "stricken out by the lawyers," it was still left legible; equally instructive and conclusive matter still remained unmutilated, at fol. 270; and besides, the lawyers could not thus, by a *stroke of the pen*, withdraw Mr. Lamar's solemn *admission* upon the record, even if it were shown or conceded that they tried to do so. The subject of this brief is fully considered (ante, p. 9, *et seq.*), where it is shown that the mutilated copy is *not in evidence*, and the full and unmutilated copy is (fols. 24, 48, and 86). The erased matter is printed in both arguments, and the original exhibits are with the clerk of this Court for inspection, if the Court desires to do so.

Mr. Lamar seems to have recovered the proceeds of these 136 bales.

Fourth Issue.

The *Fourth Issue* argued by counsel for appellant is on the assignment. Nothing will be added to what has been said on this subject, under the **Fourth Point** (*ante*, p. 25), except to remark that Mr. Stewart's statement (fol. 62), that the written assignment was "lost or mislaid" was true. It was afterwards found, where it had been accidentally placed, among papers in another case, and was produced and proved.

Fifth Issue.

"The bill of complaint alleges, paragraph III, "that one Hambleton, as an agent of the Richmond "Importing and Exporting Company, consigned a "special lot of two hundred and forty-four bales "to Charles A. L. Lamar; and in paragraph VI,

" 'that among other portions of said two hundred
" 'and forty-four bales of cotton so held by said
" 'Gazaway B. Lamar, as the legal representative
" 'of said Charles A. L. Lamar, was a lot of sixty-
" 'nine bales marked E. T. A., or E. T. Y., and
" 'another lot of sixty-seven bales marked X. Y. Z.,
" 'making a total of one hundred and thirty-six
" 'bales,' for which the bill alleges Gazaway B.
" Lamar recovered in the Court of Claims the sum
" of $23,844.88. The answer denies this allega-
" tion."

Thus counsel cuts out his *fifth issue*.

Here the gentleman's imagination is indulged again, and we have an illustration of that cheap commodity known in modern fiction as a "story *founded* on fact." The *fact* is set out early.

On page 28 he says: "The entire testimony on " the subject of the *ownership* of this cotton, in the " hands of C. A. L. Lamar, *if accepted as true in all* " *particulars*, amounts to this, that Charles A. L. " Lamar, in his lifetime, had received two hundred " and forty-four bales of cotton, the property of " the Richmond Importing and Exporting Com- " pany '*for compressing.*'" And why should it not be taken as *true in all particulars*, since it is nowhere contradicted?

Further fact is (p. 29), "It was marked X. Y. Z. and E. T. A.;" "it was taken and shipped to New York by the military of the United States in January last;" and that "there will be a bill for storage and compressing that cotton."

On pages 31 and 32 Mr. Lamar's advertisement for the owner of this cotton, with notice that he had "received payment for the same from the United States," is reproduced.

Page 30: "I shall be glad if you can prove it is yours," and "*I am acting for my son's estate*,"

addressed to Mr. Apperson, an officer of said company, is set out.

Page 31: "It is desirable that whatsoever is done should be done promptly, as I am only a *stakeholder*, and *must account soon to the executrix of my son's estate.*"

These are some of the *facts* on which this story is founded. Some of the *fictions* are the following.

1st.—Page 28: "The object of *compressing* this "cotton was that it might be shipped in a blockade "runner." Now one of less imagination would have supposed that the object of "re-bagging and compressing" cotton was to preserve it from waste.

2d.—Page 29: "This letter shows that Mr. Lamar *supposed* that some bales marked "X. Y. Z." and "E. T. A." were the cotton inquired about by Harrison, Goddin & Apperson."

The letter says, "*Mr. Terrell showed me your* "*letter* inquiring about some cotton held by my late "son Charles, for *Mr. Hambleton, agent*, &c."

"*It was marked* X. Y. Z. and E. T. A.; the ex- "act number of bales I do not know, but *it was* "*taken and shipped* to New York by the military "of the United States in January last. * * *

"*There will be a bill for storage and compress-* "*ing that cotton* which Mr. Hambleton will please "provide for."

By one less gifted than our distinguished adversary, Mr. Lamar would be credited here with dealing in "frozen facts" of his own knowledge. Mr. Terrell *showed me* "your letter," &c.; "it *was marked* X. Y. Z., &c.; "it *was taken* and shipped," &c.; and "*there will be* a bill," &c. If these terms simply show that Mr. Lamar only "*supposed*," how would he express himself with *positiveness* and from *knowledge?*

3d.—Page 30: "The complainant says that Hol-
"land means the Richmond Importing and Export-
"ing Company, and that the petition meant Ham-
"bleton for Holland."

This is no use except as an amusing and instructive illustration of counsel's abnormal genius for "twisting and turning." Complainant maintains that "Holland" is used by mistake for "Hambleton," and that Hambleton was the agent of the company.

4th.—Page 33: "Mr. Lamar also made an en-
"try in his books, under the title of 'Suspense
"Account' (fol. 22), in which the proceeds of these
"136 bales were *supposed* to be held for an unknown
"owner."

The entry is: "The United States to Suspense
"Account for E. T. A. and X. Y. Z., 136 bales up-
"land cotton, taken from the press warehouse in
"1865, of which the *owner is unknown*, and is *ad-*
"*vertised for in Richmond, Va.*, at $175.33, $23,-
"844.88." To the average mortal, this would imply no *supposition*, but a positive admission by an honest man that he had in his possession $23,844.-88 of some unknown man's money, and that he was hunting the unknown man like a Christian, to return him his money. This sort of supposition does not occur to counsel for appellant.

5th.—Page 29: "Whether this was any part of the
"cotton of the Richmond Importing and Export-
"ing Company. Mr. Lamar did not know; and it
"is apparent from what happened afterwards that
"that company made no claim to it until a long
"time afterwards, although Harrison was president
"of the company."

Well, admit that, and what of it? Does it furnish any relief or excuse to this trustee?

The "advertisement for the owner" (fol. 37) was published April 19th, 1874, as shown by the printer's abbreviations at the lower left hand corner of it, and by its statement that, "I have *this day* re- "ceived payment," which is conceded took place on April 19, 1874.

Eight days thereafter, on the 27th of April, Mr. Apperson, the secretary of the company, demanded the proceeds (Ex. L. No 6, p. 21) and that demand has been followed up with more or less vigor ever since, and with at least one very encouraging step toward success (fol. 288).

6th.—Again, on page 33, counsel says: "Mr. La- "mar's state of mind on the subject may easily be "seen from these facts. He originally thought that "he could collect for all cotton *taken out of his pos-* "*session*, and in making his will, he directed his ex- "ecutors on that theory. The lawyers corrected "this erroneous impression in the Court of Claims; "but Mr. Lamar's brief *irrelevantly alluded to* "*these items of cotton;* and then there was a judg- "ment for a large sum of money specifically stat- "ing, however, that it was for Mr. Lamar's own "cotton. A YEAR ELAPSED, *in which an appeal* "*was taken* and abandoned, during which Mr. La- "mar had been in great risk and distress; he had "paid $25,000 to one lawyer to move for its dis- "missal, which the Attorney General did not op- "pose, and so he got the money at last."

This extract is full of false assumptions and misstatements, but most of them have been disposed of elsewhere, and it is only designed now to call attention to the brilliant and characteristic flash of

obscuring and misleading logic which the whole array seems intended to enforce.

Mr. Lamar had "*been in great risk and distress* FOR A YEAR." He had paid $25,000 to *have a motion made that was not opposed;* he had studied and brooded over this case *for a year;* he had had time to look the matter over in every light; perhaps he was assisted by counsel who now "explains his state of mind," "so far as he can see (p. 32); there was a large amount of money involved, and with this time for study and deliberation he *could not help but make the mistake* of assuming that he had $23,844.88 of some other man's money, and thereupon made haste to find him out and turn the funds over to him. But if he had got the money *a year earlier*, in June, 1873, and without any "*risk and distress!*" or any time for reflection, he could not have *made this mistake* at all.

If Mr. Lamar were alive he would laugh at counsel's suggestion that he had "made a mistake" about this matter. Nothing that he has left behind him indicates the least lack of knowledge or comprehension of what he was about in this business. *It is counsel who is making the mistake.* Complainant maintained this allegation of his bill.

ALLEGED ERRORS.

Counsel for appellant is not more fair or fortunate in his Assignment of Errors of Law than in his selection and support of issues of fact. His assumptions have not forsaken his performance; but, so far as they relate to matters of fact, little need be added to what has already been said. His "SUPPOSED" law will be accorded a brief consideration.

There is nothing difficult or abstruse about the

law of this case. The only difficulty with counsel about it is, that he is not willing to recognize the law which alone controlled this case in the Court of Claims, and must control it here. If he were a mere tyro, and unfamiliar with the opinions of this court, he might be credited with ignorance of the contents of its reports nine years old. But he is a veteran here, and that imputation would insult him. This fact drives us to the conclusion (for which we are very sorry), that he is disingenuous.

First.

His first alleged error is assigned to that portion of the decision of the Court below, which is as follows:

"Three principal questions have been made in "respect to the orator's right of recovery. One is "as to whether these 136 bales were embraced in "Lamar's recovery. Upon this question careful "examinations of the proofs lead to the conclusion "that they were. The proof of the proceedings in "the Court of Claims would alone *leave the mat-* "*ter somewhat in doubt perhaps, too much so for* "*a foundation for a recovery.* But while the case "was pending he *made his will*, that of which the "defendant is executor, containing these clauses: "It is my further will and desire, and I hereby di- "rect my executors to press my claims upon the "Government of the United States for the pay- "ment of the following cotton, which are now be- "fore the Court of Claims; among other lots fol- "lowing was specified: 136 bales cotton belonging "to a gentleman in Richmond Virginia, on which "C. Lamar made advances. When all the collec- "tions for this private cotton are made, and the

"amount placed to the credit of the several ac-
"counts, and interest charged to each account for
"my advances, then a division must be made of the
"net balance to the private account of each."

"After the recovery he advertised in the *Rich-*
"*mond Enquirer* for the owner of two parcels of
"cotton, and this lot was in two parcels, stating,
"'I have to day received payment for the same
"from the United States Treasury,' and requesting
"the owner to come forward, pay advances and ex-
"penses, prove ownership, and receive the balance
"due. The proofs also show that he entered this
"cotton in his books as belonging to an owner un-
"known, but advertised for in Richmond, charged
"it there to the United States at $23,844.88, and
"credited to the United States that sum as received
"for it. This clearly shows that his claim em-
"braced this cotton, that he understood that he re-
"oovered for it, and, altogether, the proof is quite
"satisfactory that he did recover for it."

He omits the concluding portion of the Court's discussion of this topic as follows:

"*The proof, including, correspondence shows,*
"*quite clearly that this cotton was purchased and*
"*forwarded to C. A. Lamar by a Mr. Hambleton,*
"*of Richmond, as agent for the Richmond Im-*
"*porting and Exporting Company, and was owned*
"*by that company.*" (Fol. 279.)

Both his ingenuity and his disingenuousness are exemplified by this omission. This latter sentence shows that the will and the advertisement were not *alone* relied upon to identify the cotton, as might be *inferred* from the fact that only the will and the advertisement are alluded to in the extract to which this error is assigned; whilst the very *next sentence*,

and the *last one on that topic, alludes to the proof by Hambleton and McCay, and to the* "*correspondence.*" And he takes care not to disturb that *inference* by any reference to evidence in the record, in his brief allusion to the facts (p. 36), *except the will and the advertisement.* But this subject has been fully argued elsewhere.

It is in order now to look more carefully into his *assumed* law. At page 37 of his argument is the following:

"'Mr. Lamar could not have recovered for the 136 'bales in the Court of Claims, if he would. In 'that Court, at any rate, the *allegata* and *probata* 'must agree, whatever may be the law elsewhere. 'The statute, March 3, 1863, is in these words:

"'Any person *claiming* to have been the *owner* of 'any such abandoned or captured property, may 'at any time within two years after the suppres- 'sion of the rebellion, *prefer his claim to the pro- 'ceeds thereof* in the Court of Claims, and on *proof* 'to the satisfaction of the Court *of his ownership 'of said property, of his right to the proceeds 'thereof*, and that he has never given any aid or 'comfort to the present rebellion, receive the resi- 'due of said proceeds.'"

"Three conditions precedent must exist:

"1. The claimant must be the '*owner.*'

"2. He must *prefer his claim* to the proceeds 'thereof.'

"3. He must offer '*proof of his ownership.*'

"No one of these conditions existed. Mr. Lamar "was not only not the 'owner,' but he expressly

"said to the Court in his brief that the 'owner' "'was a person in Virginia.' (Fol. 270.)"

The italics in this last quotation are those of counsel for appellant, and show his contention that Lamar *could* not, and therefore *did* not swear he was "owner" of these 136 bales, under the statute of 1863. Unfortunately this Court and the Court of Claims were disagreeing with him about ten or twelve years ago, and he does not seem to have found it out yet.

In the case of The United States *v.* Carroll, this Court, in the December Term of 1871 (13 Wall. 151), held as follows:

"Mr. Chief Justice Chase:

"It appears from the findings of fact by the "Court of Claims, that George W. Carroll, residing "in Arkansas, during the first years of the late "war, raised, and was owner of certain cotton. He "died in September, 1863. During his lifetime he "had given aid to the rebellion.

"The cotton, upon his death, came in the posses- "sion of claimant as administratrix, and was in "her possession at the time it was captured by the "army of the United States. She offered evidence "to establish her own loyalty, and that she never "gave aid or comfort to the rebellion, which seems "to have been rejected by the Court. The estate is "insolvent. The creditors are numerous, and there "is no proof in respect to their loyalty.

"The Court of Claims decided, as conclusion of "law from these facts, that the claimant's right as "administratrix depended upon the proof of loy- "alty of the decedent, and it being shown that "he voluntarily gave ~~it~~ aid and comfort to the "rebellion, dismissed the petition.

"We think the Court of Claims erred. The "statute of March 12, 1863, makes the right to re- "cover depend upon proof of ownership of the "abandoned or captured property, of the right to "the proceeds, and of the fact that the owner gave "no aid or comfort to the rebellion. *It is plain to "us that the ownership to be proved was that which "existed at the time of the capture or abandon- "ment, and that the right to the proceeds was that "which existed at the time of the petition filed in "the Court of Claims.* These titles, in their nature "capable of separation, co-exist in the petitioner. "True, the ownership is not absolute, *nor was her "right to the proceeds absolute.* She could claim "only in a representative capacity—first, in right "of the intestate, and secondly, *as trustee for cred- "itors and distributees.*

"At the time of the death of the intestate the "cotton was in his possession, unaffected by any "proceeding in confiscation. After his death, "upon the appointment of his widow as admin- "istratrix, the title vested in her unforfeited. "*It was a title upon which she could maintain "trespass or trover.* (Redfield on Wills, "114-116; 1 Williams on Exr's and Adm., 496; "2 Brevard Rep. 313, 23 Pick, 129). And it was "the only title to the property subsisting at the "time of capture and sale and payment of the "proceeds into the Treasury. *The statute does "not make it the duty of the Court to inquire "whether the intestate who had been the owner "gave aid ~~not~~ and comfort to the rebellion,* but whether "such aid or comfort was given by the actual own- "er at the time of the capture. This OWNER, "within the meaning of the statute, was the ad- "ministratrix. *It would be much more reasona- "ble to institute such inquiries in respect to credi-*

"*tors and distributees than in respect to the intes-*
"*tate. But such an investigation might be endless*
"*and could not, we think, have been contemplated*
"*by the legislature.*

"We think, therefore, that the Court of Claims "erred in not admitting the proof offered by the "petitioner, and for this cause the decree must be "reversed."

Now, this decision was rendered before the third and fourth petitions were filed, and continued to be the law of such cases until Villalonga's case, which was decided at the October Term of this Court, 1874.

How the Court of Claims understood this case is shown by the opinion in Villalonga's case, rendered the same day Lamar's case was decided in that Court, to wit: June 2, 1873.

Villalonga's Case.

"The Court found the following facts:

"I.—The claimant was a resident of Savannah, "during the rebellion, and owned, in his own right, "196 bales of cotton, which were captured by the "army, December, 1864. They were sold by the "agents of the Government and the proceeds paid "into the Treasury of the United States, being "$175.33 per bale, amounting in the aggregate to "$34,364.68.

"II.—Before the capture of Savannah, the "claimant was, and for a long time had been, en-"gaged in business as a cotton factor. At various "times during the years 1863 and 1864, he received "cotton as factor from various persons, and made "advances thereon in money of the Confederate "States. At the time of the capture of Savannah

" he thus held 70 bales of Sea Island, and 227 bales " of Upland cotton, on which he had made advances " to the amount of $51,153.17 in notes of the Con- " federate States. All of this cotton was seized by " the army of the United States, and subsequently " sold, and the proceeds thereof paid into the " Treasury; which proceeds being $231.79 per bale " for the Sea Island, and $175.33 per bale for the " Upland cotton amount in the aggregate to $56,- " 025.21. The claimant has failed to prove the in- " trinsic or marketable value of the Confederate " notes at the time of making the advances.

" Nott J. delivered the opinion of the Court:

" The *Supreme Court* decided in Carroll's case " (7 Ct. Cls. p. 255) that *a suit may be maintained* " *under the abandoned or captured property act* " *by one who is not the owner in his own right,* " but who, at the time of the seizure, was *possessed* " *of the property,* under a title upon which he could " maintain an action of trover or trespass, and who " at the time of bringing the suit was entitled to " receive the proceeds as *trustee* or representative " *of parties not before the Court.* We perceive *no* " *difference between the case of an administratrix* " *and a factor in possession, with a lien upon the* " *property for advances made.* The factor is en- " titled to hold the property; he may sell it to re- " pay his advances, or may maintain an action of " trover or replevin, to the *exclusion of any action* " *by the principal;* and on receiving its value he " *becomes a trustee of the original owner to the ex-* " *tent of his residuary interest.*

" It may be *doubted whether the original owner,* " not in possession, not entitled to possession, and " not primarily entitled to the proceeds, *could* " *maintain a suit here under the statute;* and it is

"tolerably certain that he and the factor *could not* "*have brought several and conflicting suits for* "*their respective interests, and compelled this* "*court to settle disputed accounts between them.* "Therefore it seems tolerably clear that *this suit* "*is properly brought by the factor*, who on re- "covery will be liable to the principal for the sur- "plus, after paying his own advances, as if this "suit were an action of trover brought in a court of "the common law.

"The judgment of the court is that claimant re- "cover the proceeds in the treasury of 423 bales of "Upland cotton captured at Savannah, being "$175.33 a bale, and 73 bales of Sea Island, being "$231.79 a bale, amounting in the aggregate to "$90,389.89."

(8 Court of Claims Rep., 452).

There is a singular parallel between the cases of Lamar and Villalonga. Both were citizens of Savannah; each held some cotton in his own right and some as factor; both made advances on cotton for which they had and asserted a lien; both had cotton seized in Savannah by the same officers and at the same time; each brought suit in the Court of Claims for the cotton, some of which they owned absolutely, and in part of which they only had a special property; both suits were decided in the Court of Claims on the same day; each was awarded the full value of the cotton on which he only had a lien for advances; both case were appealed by the United States, and here the parallel ends.

The appeal in Lamar's case was dismissed *and his judgment paid.* Villalonga's case was sent back o the Court of Claims to be corrected under in- structions, *after* Mr. Lamar's judgment was paid.

It is probably *suspected* by this time that it is

counsel for appellant who is in error on the law, and not the court below.

Second.

Here counsel assigns error to the last sentence added to the alleged error just considered. It seems that nothing further need be said on the subject here.

Third.

The third alleged error assigned by counsel is as follows:

"The court omitted in the opinion to quote the "original act of incorporation (p. 34), in which the "object was specifically stated to be trading from "the ports of the Confederate States of America' "—otherwise blockade-running; and having "omitted that the court says: 'The corporation "appears to have been *lawful enough in itself.* "The business *it was chartered for might be law-* "*ful or unlawful.*'"

To sustain this error, he quotes 5 Otto, 213. That was not the law in the time of Lamar's case, however it may be now. He would have had inquiry made in the Court of Claims as to loyalty of the owner, in Richmond, Va. But this Court said in Carroll's case, which had been considered by and *was* before the Court of Claims the very day Lamar's case was decided, that

"It would be much more reasonable to institute "such inquiries in respect to creditors and dis- "tributees than in respect to the intestate. *But* "*such an investigation might be endless, and could*

"*not, we think, have been contemplated by the L gis-*
"*lature.*"

All the cases cited by counsel on page 39 of his *argument*, in support of this "supposed" error are too young to reach it. Even if they had the effect to reverse Carroll's case, they could not operate to reverse an *executed judgment*, which is Lamar's case.

It cannot be necessary to repeat the discussion of Counsel's misrepresentations of fact under this error.

Fourth.

The fourth "supposed" error assigned is to the following:

The Court says (p. 209): "The other principal "question is whether the claim is so assigned to "the orator that he can recover upon it in his own "name. It is not questioned but that an assignee "of a mere right of action or recovery may main- "tain a suit in equity upon it in his own name; but "it is strenuously argued that no real and valid as- "signment of this claim is shown. That company "had a valid claim against Mr. Lamar, the tes- "tator. He held these avails of the property of "the company in trust for the company. The com- "pany had a right to charge him as its trustee of "the funds, whether he was willing or not. He "seems to have been willing, however, and to have "charged himself so far as he could. The disposi- "tion of the cotton was directly within the cor- "porate powers of the company, and the disposition "of the avails of the cotton was impliedly within "the same scope. The charter provided that: 'The

"affairs of the company shall be managed by a "President and Board of Directors, *whose term of* "*office*, and their number, shall be determined and "elected by the stockholders, and the said Board "of Directors shall possess all the corporate powers "of the company.' The proof shows that no meet- "ing of the company had been held, for any pur- "pose, for many years, and that very little or no "corporate business had been transacted within a "number of years before the assignment. *It does* "*not show what term of office was determined upon* "*for the directors. It does show by the testimony* "*of the officers who the directors were at the time*, "which was competent for that purpose, especially "as the proof also shows that the records were "destroyed. One of them died. The president and "all the others joined in the execution of the as- "signment. This seems to be sufficient to transfer "the title to the claim to the orator."

That the subscribing witness need not to be called in such a case as this is fully shown (*ante*) p. 25, *et seq*).

Counsel says (p. 42):

"The Court, however, says that the 'President "'and all the others (directors) joined in the execu- "'tion of the assignment, which seems to be suffi- "'cient.' If such a form can be good, of course "the signatures must be proved by the subscribing "witnesses, which was not done; and, moreover, it "must appear that the persons so calling them- "selves were directors *at the time* they signed the "agreement. There is *no presumption of law in* "*their favor, as there is in favor of a deed under* "*the acknowledged seal of the company, executed* "*in due form.*'"

He gives no authority for this doctrine, and it is not the law.

"If the instrument be executed by a duly author-
"ized agent, *the seal, though mere paper and wafer,*
"*without any specific stamp, will be* PRESUMED *to*
"*be the corporate seal.*"

Stebbins *v.* Merritt, 10 Cush., 27.
Mill-dam Foundry *v.* Hovey, 21 Pick., 417.

The seal in this case was wafer and paper, the seal of the Company having been burnt in 1865 (fol. 88). The burden was then put upon the defendant (*ante*, p. 29).

A corporation always survives for the purpose of winding up its affairs.

There was no error committed upon the subject of this assignment.

Fifth.

The fifth error assigned is as follows:

"The Court also says:

"The bill alleges that Gazaway B. Lamar re-
"ceived this cotton as executor of C. A. Lamar,
"and held it as such when it was seized. The an-
"swer denies that he was the executor of C. A.
"Lamar, or held it as such. The proof does not
"support the bill, but sustains the answer on this
"point. He appears to have received it as *survi-*
"*ving partner.*

"*There is no such evidence in the case.*"

The Court is mistaken here. The bill nowhere describes G. B. Lamar either as "executor" or "administratrix." It is said, in paragraph III.,

that he "administered upon the estate of the said Charles." So he did, but under the name of the widow as executrix, and for her. In paragraph VI. he is described as "the legal representative of said Charles A. L. Lamar." So he assumed to be, and so he must be for the purposes in this case. No attempt is made by the bill to charge the estate of C. A. L. Lamar. It only seeks to recover in the hands of G. B. Lamar's executor, funds belonging to the complainant. The son's estate is only mentioned in the line by which the complainant is compelled to trace the funds and prove his ownership of them.

This matter has been more fully discussed, and the record cited, *ante* p. 23, *et seq.*

The allegations of the bill in this regard were "mere matter of inducement," as the Court below said, and the mistake is immaterial.

Sixth.

The sixth alleged error is assigned as follows:

"The Court says: The orator does not seek to "recover through C. A. L. Lamar, nor upon any "right of his, nor upon any *obligation* incurred by "him. This is a manifest error."

There is error here, but it is *committed by appellant's counsel, and not by the Court.* The prayer of the bill shows who is sought to be charged, and in what capacity. Defendant's testator advertised for the owner of certain money which he had collected from the United States. The complainant details in the bill how he will undertake to prove title to this fund, and then prays judgment as follows: (fol. 7.)

"Your orator further prays that, upon the final "hearing of this cause he may have a decree "against said G. DeRosset Lamar, as executor "aforesaid, to pay the sum of $23,844.88, with in- "terest from the 19th day of April, 1874, less such "sum as, upon on accounting, may be found due for "costs, charges, and advances on said cotton, to- "gether with his costs and disbursements herein."

The material allegations of the bill are all well maintained in the record; no material error was committed by the Court, and the judgment should be affirmed with costs.

As the last of this argument is ready to go to the printer, the complainant brings to counsel a printed statement of the case as it lies in the record, in a continued narrative form, and requests that it be appended to this argument. It will accordingly be bound herewith. Professor McCay, as his performance shows, is well qualified for the task of eliminating the connected story from the voluminous record. His careful reference to pages of the record and of the brief for appellant, will greatly abridge the labor of the Court in exploring the record. It is to be regretted that counsel could not have had the result of the complainant's careful study and preparation of the facts at the commencement, instead of at the end of this argument. The argument might then have been based upon it, and made much shorter. The Court, however, will have the benefit of his labor, of which counsel was unfortunately deprived.

J. K. HERBERT,
Of Counsel for Appellee.

FACTS IN THIS CASE.

The claimant's cotton seized in the possession of G. B. Lamar.

Before the year 1864, the claimant in the court below from which this appeal was taken, bought at Augusta, Georgia, over 2,500 bales of cotton for the Richmond Importing and Exporting Company (Record, p. 23), whose assignee he now is. Of this he sent 1,500 or 1,600 bales to Savannah to C. A. L. Lamar who had a warehouse and cotton-press in that city, to be held subject to the order of T. E. Hambleton, the agent of said company (R. p. 24). This cotton was received and reported to the said agent (R. p. 30). In the autumn of 1864, the said Hambleton sailed for Europe, leaving 244 bales of this cotton in the warehouse of C. A. L. Lamar, subject to his order (R. p. 30). Soon after this, Savannah was captured by General Sherman, and in January, 1865, all the cotton in this warehouse and in Savannah was seized by the military forces under his command (R. p. 71), and "all the books and papers of this warehouse were destroyed" (R. p. 71). Before General Sherman reached Savannah, C. A. L. Lamar left the city, and delivered over to his father, G. B. Lamar, the cotton he held, and "it was taken from G. B. Lamar's possession" by the military (R. p. 201). In the autumn of 1865, Harrison Goddin & Apperson, a firm in Richmond, two of whose members were officers of said company, sent a letter to a friend in Savannah, inquiring about the cotton, in which they were interested, left there by Hambleton. This letter was shown to G. B. Lamar, who replied to it and said (R. p. 15): "Mr. Terrell showed me your letter inquiring about some cotton held by my late son Charles for Mr. Hambleton, agent, etc. It was marked XYZ & ETA; the exact number of bales I do not know, but it was taken and shipped to New York by the military forces of the United States, in January last." "There will be a bill for storage and compressing that cotton, which Mr. Hambleton will please provide for."

G. B. Lamar receives payment for claimant's cotton.

Nothing more was heard of this cotton by the officers of said company until April 19th, 1874, when an advertisement appeared in the *Richmond Enquirer*, over the signature of G. B. Lamar, in which he said (R. p. 20) : "Some time in the year 1864, some persons in Richmond placed two parcels of cotton in the possession of my son, Charles A. L. Lamar, of Savannah, Georgia, deceased, which were stored in Lamar's warehouse, and upon which some advances were made, besides the storage, cartage, etc. The cotton was taken by the military forces of the United States." "I have to-day received payment for the same from the United States Treasury, and the rightful owner is requested to come forward, prove his ownership, and receive the balance due."

Two days before this publication, G. B. Lamar made a "journal entry" in his private books of account, "in the following words" (R. p. 12) :

> "The United States To Suspense Account
> for ETA & XYZ 136 bales of upland cotton taken from the press warehouses in 1865, of which the owner is unknown, and is advertised for in Richmond, Va., at $175.33, $23,844.88."

This entry, on page 166, was duly posted to pages 15 and 43 in the Ledger, where "The United States was debited and Suspense Account credited with $23,844.88, one of these postings being dated April 17th.

J. L. Apperson, a director in said company, wrote to G. B. Lamar in reply to this advertisement, claiming the cotton, and in the correspondence which followed, sent to G. B. Lamar a copy of G. B. Lamar's letter of Sept. 24th, 1865, in which he had given the marks on the cotton left by Hambleton with C. A. Lamar; and G. B. Lamar, who had been, in early life, before he removed from Georgia to New York, a dealer in cotton, and was a perfect business man, conversant with all the rules and customs of trade, recognizing that the cotton about which he made the "journal entry" had the same marks as those he had himself given in this letter of 1865 for the cotton left by Hambleton with his son, and knowing that the marks on cotton are the designations by which it is bought and sold and known and transported (R. p. 24), and perceiving that the cotton, therefore, was identified, but no proofs of ownership given, said, in reply to Mr. Apperson (R. p. 21) : "I have yours with a copy of my letter to your firm of Sept. 24th, 1865, which has some direct reference to the case. Why is it that

your Mr. Hambleton, residing in Baltimore, has not been heard from?"—thus calling attention to the necessity of the proof of ownership; and adding: "I am only a stakeholder, and must account soon to my son's estate."

G. B. Lamar died in the autumn of this year, before the proof of ownership was given, and when this was presented to his executor, he declined, under the advice of his counsel, to settle for the cotton.

By this advertisement, by this entry on his books, and by this correspondence, which lasted several months, G. B. Lamar showed that he believed that he had recovered for the Hambleton cotton, and this belief, thus proved to the court below, became knowledge of the most positive kind, when it was proved that G. B. Lamar had brought suit in the Court of Claims for 3,275 bales of cotton in Savannah (R. pp. 52, 58, 196, 201 and 202), and received an award from the Court of Claims (R. p. 50) for the whole of the 3,275 bales of upland and Sea Island cotton, word for word and figure for figure, for the number of bales of each kind of cotton and the price of each as stated by his solicitor (R. p. 201).

This belief became knowledge, as G. B. Lamar was a perfect business man and in full possession of his faculties, and therefore knew what cotton he had claimed in Savannah, and as all of this was paid for, he knew that he had been paid for the 136 bales described in the journal entry.

Further evidence that G. B. Lamar recovered for this cotton.

In this suit before the Court of Claims, G. B. Lamar, after all the evidence had been submitted, and after his counsel had given in his brief, presented to the court an "additional brief" (R. p. 201) signed with his name and filed in the records of the Court of Claims on April 22d, 1873, which was duly certified before the court below in the present case (R. p. 13), in which he "specified the particular parcels" which he had before stated in general terms were "claimed by him as taken from his possession" at several places, and among others at "Lamar's Press Warehouses" in the City of Savannah, where, according to the "Journal Entry" the 136 bales for which he believed he had received payment were stored. These parcels are numbered from 1 to 28 and No. 26 (R. p. 205) agrees so minutely with the Journal Entry and advertisement before mentioned, that no one can doubt its identity. Both consisted of the same number of bales; both had two marks

which were the same; both were upland cotton; both were owned by a person in Virginia; both had been received by Charles A. L. Lamar; on both advances had been made by C. A. L. Lamar; on both there were dues for compressing; both were stored at the same place; and both had been taken by the military forces of the United States.

This brief, therefore, proves, 1st, that No. 26 was claimed, because he was there "specifying the particular parcels claimed;" and, 2d, that it was in Savannah, for it is stated in the discussion of No. 26 that it was part of the 3,553 bales which had been mentioned two pages before (R. p. 201) to have been on the eastern wharves of the city of Savannah. Now as all that had been claimed in Savannah had been paid for, as was shown above, the proof seems to be unquestionable, according to the records of the Court of Claims submitted in the case as evidence, that the claimant's cotton of 136 bales was paid for, and that the defendant owed the $23,844.88 which had been received for this cotton and sued for in the present case.

Facts which disprove the objections made by defendant to this conclusion.

Although this proof of indebtedness seems to be perfect; and although all the facts on which it is founded have been derived from the statements of G. B. Lamar himself, who knew all about the cotton for which he sued in the Court of Claims, even to the marks on every bale, the kind of cotton, the mode of packing, whether in square or round bales, the kind of ownership he held, the mode in which it had come into his possession, the persons who had seized it, the vessels by which each separate parcel had been transported to New York, and other minutiæ about each separate parcel; still the defendant knowing nothing personally about the cotton (R. p. 13) except what he learned from G. B. Lamar's papers, undertakes to show that G. B. Lamar was mistaken, and that the facts disprove the claim and the recovery.

The evidence of G. B. Lamar's thorough knowledge of the facts of this case is to be found in many pages of this evidence, but the statements about No. 1 in his additional brief may be cited as an example. (R. p. 203). Here he corrects the Quartermaster General as to the number of bales in this parcel of 32 bales, and as to the mode of packing, whether in square or round bales; tells by what vessel the 24 square bales were shipped; by what vessel

the 8 round bales were shipped; the numbers by which each were entered on the bills of lading; and that one bale had to be rebagged before shipment on account of the rotten condition of its covering. The denial of defendant is therefore a denial made by one who has no personal knowledge of the facts, of the belief and knowledge of his father who knew them perfectly. The defendant's counsel in the 10th page of his brief says: "The bill charges that G. B. Lamar sued for and claimed 136 bales of cotton held by defendant in trust for plaintiff," but that the "record of that suit establishes beyond the possibility of question that no such suit was ever brought by G. B. Lamar." This is bold, fairly stated, and exactly to the point. Now what are the facts and reasoning by which that statement is made good? The first is on the same page, that G. B. Lamar swore that "he owned the 3,275 bales claimed in Savannah" as by statute he must swear. The four successive petitions are then analyzed, and after that he concludes, "it is apparent therefore, on the inspection of the record, that G. B. Lamar did not sue for the 136 bales as the bill alleges and the answer denies." The argument is, that as the owner of the 136 bales was some person in Virginia, G. B. Lamar could not and did not swear he was the owner. That is, that the words owner are used in the same sense in G. B. Lamar's oath and in the description of the ownership of the 136 bales. But the record in the Court of Claims proves that the word is used in different senses, and there was evidence before the court below in the present case that the meanings of the word owner in G. B. Lamar's claim included one which exactly described G. B. Lamar's ownership in the 136 bales, and that the 136 bales were included in G. B. Lamar's claim. Of these three statements proof will now be given.

1st. That "owner" was used in different senses in the oath and in describing the ownership by the person in Virginia. The ownership of the 136 bales by the person in Virginia is mentioned in the third petition by the solicitors in the ordinary use of that word when one speaks on 'change, in the streets, or in common conversation. But these solicitors had sworn that G. B. Lamar owned 4,185 bales in the second petition (R. p. 54), and repeated this statement in the third petition signed by them (R. p. 56), and in this last, they mentioned that the 136 bales were held on account of a gentleman in Virginia, and that 256 bales were held on account of the estate of R. Thompson (R. p. 56), and that G. B. Lamar held these 392 bales (which had been stated to be a part of the

whole 4,185) as a commission merchant, "on which he had made cash advances, and in which he had therefore a special property until he sold the goods and reimbursed himself," thus showing that his solicitors, in their oath that G. B. Lamar owned 4,185 bales of cotton, used the word "owner" in a technical sense, which included the having a special property. Now the solicitors doubtlessly informed G. B. Lamar of this double sense when he made his oath; for G. B. Lamar was no lawyer, and in legal matters followed the advice of his counsel as other people are accustomed to do. So far this fact merely raises a presumption that G. B. Lamar in his oath used the word in the same way that his counsel used it.

2d. G. B. Lamar, in his fourth petition, swore that he owned 3,701 bales of cotton, of which 3,275 were in Savannah, and then adds that 446 were held in partnership with W. W. Cheever, who was interested to the extent of half the profits, and that 2,371 were held in a similar manner, two persons being interested to the extent of a third of the profits, and that "as to 256 bales claimed in this petition (R. p. 60), they were purchased and paid for by this petitioner for D. A. Martin, and were held by him to be delivered to said Martin on the payment of the price and charges."

These statements show that G. B. Lamar used the word "owner" in a technical sense, including three different cases in which he had paid the money for the cotton, but did not own it in the ordinary sense of that word.

This statement shows that G. B. Lamar was perfectly honest in his statement of his ownership, although it was not absolute, and that he used the word in a technical sense, which was wider than the ordinary meaning of that word.

This statement is not yet sufficient to include under the word ownership any cotton for which he had not paid the purchase money.

3d. G. B. Lamar, in his will executed September 28, 1872 (R. p. 20), which time was between the two dates when he swore that he owned 3,275 bales of cotton in Savannah, which will, though not in evidence before the Court of Claims, is in evidence in this case, and is therefore evidence before this court of the meaning attached to those words in his oath before the Court of Claims, the interpretation of which oath is now before this court.

In that will he says, item 7th (R. p. 17), "it is my will and

desire, and I hereby direct my executors to press my claims upon the Government of the United States for payment of the following cotton which are now before the Court of Claims," referring thus to this suit. He then enumerates the cotton about which these directions are given, and in the second sentence he mentions "136 bales bought by C. A. L. Lamar of F. S. Gue, and paid for by him for equally joint account with me." Now it is not important whether this claim could have been lawfully made in the Court of Claims. That suit has been decided, and the law regarding that suit is not now in question. It is the meaning of G. B. Lamar in the words which he used in his oath in that case which is now under discussion, and it is here proved that he used the word to include a partnership where he had not paid any money, but only had an interest in the profits, his partner having, however, deceased. In the next sentence he names a new partnership, and says 348 bales were included in that account, meaning a partnership in which G. B. Lamar and C. A. L. Lamar were equally interested, and in which sometimes one and sometimes the other furnished the money, the 348 bales including probably the 136 bales bought and paid for by C. A. L. Lamar and two purchases of Meinhard, one for 112 bales and the other for 100 bales, of which only the latter is here mentioned, but both of which purchases were made by C. A. L. Lamar, and both paid for to Meinhard by G. B. Lamar (R. p. 62). In the continuation of his instructions to his executors there is another parcel of cotton named on the next page, in which still another special ownership is mentioned. It is this (R. p. 17): "136 bales of cotton belonging to a gentleman in Richmond, Virginia, on which C. A. L. Lamar made advances." This is the cotton sued for in the present suit, and this paragraph gives the most positive testimony that it was included in the claim in which he had sworn that he owned 3,275 bales of cotton in Savannah.

Mention has now been made of seven claims included under the word *ownership* in G. B. Lamar's oath. But there is another. G. B. Lamar claimed and recovered the interest of W. W. Cheever and of C. A. L. Lamar in all these partnerships and special properties of both these partners who had died before the suit was brought. Of this eighth and last claim no proof can be obtained from the will. But there was evidence of it before the lower court in this case, and that evidence included all the seven cases mentioned before, and also this last and eighth case.

In G. B. Lamar's additional brief, as presented in evidence to

the court below (R. p. 13; Answer, 14), the grounds of his claim before the Court of Claims are expressly and explicitly stated, and they include every one of the eight grounds mentioned above. It is now asserted by the counsel in this case that these grounds were stricken out after the brief was filed, and are not in the final record of the Court of Claims. Nothing of this was heard of in the lower court; but whether it be in the testimony now or not is of no importance for the present inquiry, which is—What was the sense in which G. B. Lamar used the word owner in his oath before the Court of Claims? The interpretation of that word belongs to the present case, and must be decided by the testimony before the court below. And this proves, beyond question, that G. B. Lamar honestly swore to ownership in several cases not included in his enumeration of the technical or qualified ownership mentioned in his fourth petition, and that he included under this meaning:

1. His own absolute ownership.

2. His ownership where he had paid the purchase money and Cheever was a partner in the profits.

3. His ownership where he had paid the purchase money and both Cheever and his son were partners in the profits.

4. His ownership where he had paid the purchase money, and held the property for the real owner.

5. Where he had paid the purchase money, and his son was his partner in the profits.

6. Where his son had paid the purchase money, and G. B. Lamar was a partner in the profits.

7. Where his son had made advances on cotton, and thus had a special property before his decease.

8. For the partnership interests of both his deceased partners as creditor in possession.

The court below saw, and the Supreme Court will be able to see, that the presumption which defendant's counsel has raised

from G. B. Lamar's mention of his three qualified interests in the 3,701 bales claimed in the fourth petition, implied absolute ownership in all, except these three cases, is not only unfounded but disproved, and that the 136 bales claimed in the present suit are not only not excluded by his oath, but positively proved by the explicit statement of G. B. Lamar himself to have been included in his claim before the Court of Claims.

It would seem, therefore, that the bold and positive statement made by defendant's counsel, that the record of the court shows that no claim was brought for 136 bales in this suit before the Court of Claims, is not only unsustained, but that the exact opposite was proved by testimony before the court below drawn from the will of G. B. Lamar, which is in evidence in this case.

The defendant's counsel next announces the fourth issue, as it is called, and says the bill alleged that G. B. Lamar recovered for the 136 bales. "The record again sustains the answer to the bill, and shows that he did not recover one dollar for those 136 bales."

This is equally positive as before, but has not, as the preceding issue had, a slight presumption in its favor. Nor is a single sentence or statement given from the record to prove this. The record is ignored, and the brief of G. B. Lamar's counsel is taken up and followed for the whole of the proof. It is indeed asserted that the brief is supported by the testimony, but that is mere assertion, and is altogether erroneous.

The facts in the brief will, however, now be examined, and the assertion that the testimony given in the brief proves that no recovery was made for the 136 bales will be considered.

The first statement in the brief relates to the amount of purchases of cotton made by G. B. Lamar through his agents, and this is in the main correct, but that of itself is no proof that the 136 bales were not paid for, as the most of these purchases were made out of Savannah, and the claim and the recovery are for 3,275 bales in Savannah.

The brief, however, next undertakes to prove "that of the 3,966 (defendant's counsel's brief, p. 16) bought outside of Savannah, 3,929 were transported to Savannah."

It is very singular that neither the counsel of G. B. Lamar in the Court of Claims, nor of G. D. Lamar, his executor in the present suit, noticed that this contradicted entirely G. B. Lamar's oath in his first and also in his last petition. For in both he swore that 426 bales of his cotton bought out of Savannah

remained at Tallahassee, where it was seized by the United States and claimed by him, whereas this brief asserts that only 37 bales, the difference of 3,929 and 3,966, of all his purchases outside of Savannah remained in the country. Besides this, Mr. Lamar swore in his petition that 522 bales of his cotton were seized at Thomasville. Here are nine or ten hundred bales sworn to be in the country, never transported to Savannah, while the two briefs show that all but 37 were brought to Savannah. This proves most clearly how little these counsellors knew of the facts in this case. G. B. Lamar understood them, but neither of these counsellors had studied them or analyzed them, so as to make any fair conclusion from them. Neither of them touches any of the facts without making mistakes. This might have been shown by their conclusions about the petitions, which are very simple and easily understood; but the testimony about the purchase and recovery of 3,275 bales of cotton in Savannah cannot be thoroughly understood by any one since the decease of G. B. Lamar. The defendant's brief proceeds and says: "The result of that proof as shown by the brief is, that G. B. Lamar owned 380 bales bought in Savannah and transported thither 3,677 bales, making a total of 4,057 bales, which were his own and paid for by his agents, and of which the 136 bales formed no part. But, as G. B. Lamar only claimed 3,275 bales, this discrepancy in his favor of 782 bales can be explained by G. B. Lamar, if an opportunity is offered for doing so; the judgment of the court was for this reduced amount, rendered after the proof, which showed a greater amount to be his due." Now any person of common sense knows that if 4,057 bales could have been proved to have belonged to G. B. Lamar, he would have claimed them, and thus received more by $120,000 than he did receive. But the truth was, that the pretended proof was fallacious and false; and that G. B. Lamar could not, and did not, prove that he owned 3,275 bales exclusive of the 136 bales advanced on by his son, C. A. L. Lamar. The proof of this will now be given; and first, one of the bills included in the total of 3,929 bales transported to Savannah is for cotton o C. A. L. Lamar, and had therefore nothing to do with this proof. It is for 141 bales, and is No. 3, on p. 201. The bill itself is found (R. p. 185), and begins with tobacco transported for G. B. Lamar, and then goes on for 114 bales of cotton for C. A. L. Lamar.

The cotton part of this bill is therefore wrongly inserted in the table on p. 201 of the Record. The receipt No. 10, on p. 186, though for money paid by G. B. Lamar, is not for any cotton ever bought

or owned by him. It is all for Sea Island cotton, and he only had 199 bales of Sea Island cotton in his "additional brief," which gives an account of all cotton claimed, and as Sea Island was more valuable than the other, this name would not have been omitted. The 199 bales constitute Nos. 1, 8, 9, 10, 11, 12, 13, and are for 32 + 82 + 9 + 28 + 22 + 20 + 6 or 199 in all, and on (R. p. 206,) the 199 are summarized as 199 Sea Island. The very same number of 199 is given in the will (R. p. 17, 18), and all of the marks given in the margin are identical with those mentioned in the brief. This gives three complete proofs that only 199 were owned. These 199 bales are all included in the receipts given a few pages before, excepting 32 bales (No. 1 of the additional brief), which were bought in Savannah and therefore could not be in the R. R. receipts. 82 are in No. 6 (R. p. 185) ; 9 are in No. 18 (R. p. 188); 12 in 26 and 16 in No. 28 (R. p. 192); 20 in No. 31(R. p. 193); 28 in No. 33 (R. p. 193). These make up the whole 199, which are in the "additional brief." All of these have the same marks as in the brief, and are thus fully identified. The proof is then complete that the 326 bales of Sea Island cotton in No. 10 were not owned or claimed by G. B. Lamar.

But this is further shown by receipt No. 33 (R. p. 191) where it appears that the 326 bales of Sea Island cotton of No. 10 were drayed from the C. R. R. to the cotton press for steamers *Lillian* and *Florie*, and therefore to be transported from Savannah.

It therefore appears that two of the R. R. bills whose cotton is summed up (R. p. 201) viz., No. 7 for 141 bales and No. 9 for 326 bales, were not for cotton received and stored by G. B. Lamar. These two make a total of 467, which reduce the total of 3,929 to 3,462 transported by rail to Savannah for G. B. Lamar and stored by him in Savannah.

The solicitors deducted some from the amount thus received by G. B. Lamar as President of the Importing and Exporting Company, but they deducted too small an amount. G. B. Lamar purchased through W. W. Cheever 5,768 bales of cotton on the plantations in Florida (R., p. 197); of this 2,500 bales were sold (R., p. 197 and 198) to this I. & E. Com. This sale was *bona fide*, but there could be no formal delivery and none was necessary, as it would be from G. B. Lamar to G. B. Lamar, President. The cotton remained on the plantations and some of it was transported to Savannah and included in the R. R. bills. Some of the bales so transported were indicated on these bills to be for the Importing and Exporting Company, but the officers of the R. R. Company who received the

cotton from the negroes who drove the wagons containing the cotton of the planters could not learn the exact ownership, and as it was of no importance, they neither found out the ownership of all nor reported it. Probably the planters themselves did not know it in all cases, as it was not necessary that G. B. Lamar should inform them. G. B. Lamar knew, and doubtless had it recorded on his books, and perhaps no one else knew. Of the number of bales thus transported and belonging to this company, there are two statements from G. B. Lamar in the evidence. One is in his additional brief (R. p. 206) that the Importing and Exporting Company had in Savannah 688 bales; and also (R. p. 18) the same statement is made.

These, therefore, must be deducted from the amount transported to Savannah for G. B. Lamar, and for which he paid the R. R. bills, because they were transported to him as President and not as an individual person. When so deducted from the total corrected number given above as transported to Savannah, viz., 3,462, they leave 2,774 bales as transported from the interior and stored in Savannah of G. B. Lamar's own cotton. To this must be added that bought in Savannah, which is given (R. p. 199) at 380 bales, making a total of 3,154 bales.

By these facts it appears, that G. B. Lamar did not have 3,275 bales in Savannah without including the 136 bales that C. A. L. Lamar had made advances upon. These facts dissipate entirely the proof given in the brief before the Court of Claims that G. B. Lamar had more than 3,275 bales in Savannah, and explain what the solicitor of G. B. Lamar said he was unable to explain, but that G. B. Lamar could do this, if an opportunity was offered.

These facts dissipate also in like manner the proof offered by the counsel of G. D. Lamar in the present suit, which is taken from the brief in the Court of Claims, and they prove exactly the opposite of the proposition of this counsel, viz., that the 136 bales must have been included in the 3,275, instead of what he asserted, that they could *not* have been so included.

Additional facts that prove the recovery of the 136 bales.

G. B. Lamar, in his additional brief in separate numbers from 1 to 28, "specified the particular parcels" of cotton he claimed (R. p. 203). These had been stated in his first petition (R. p. 52) to be at three places, Savannah, Thomasville, and near Tallahassee. In this enumeration, No. 27, of 426 bales is stated to have

been taken in Florida (R. p. 205), and No. 28 (R. p. 206), of 522 bales is stated to have been taken in Thomasville. If these two, which sum up 948, be taken from the total of 4,222 bales claimed (R. p. 206), they leave 3,274 for the claim in this brief at Savannah in the previous twenty-six numbers. This number, 3,274, is expressly stated (R. p. 206) "to be claimed by G. B. Lamar in Savannah." Now, of these twenty-six numbers, No. 26 is for the 136 bales sued for in the present suit. But it has been shown before that all the cotton claimed in the petition for Savannah of 3,275 bales were paid for (R., p. 50), 3,184 uplands and 91 Sea Island, making 3,275. It follows that the 3,274 of this brief, which were in Savannah, were paid for, and therefore the 136 bales claimed in this suit.

Evidence on which the Court of Claims decided.

G. B. Lamar swore that he owned 3,275 bales of cotton in Savannah. This was never denied by the United States solicitors, and was legal evidence before the court. G. B. Lamar confirmed this oath by showing that he had bought and had transported to Savannah about this number, his solicitors saying more than this number. G. B. Lamar further confirmed it by describing minutely in his additional brief every parcel of cotton he claimed. His solicitor, in his brief (R. p. 202) divided the 3,275 bales into 91 Sea Island and 3,184 uplands, and gave the average price of the Government sales of their Sea Island cotton in New York at $231.79, and of their upland $175.33, making for both $579,-343.61.

These figures the court followed exactly (R. p. 50) in their final judgment, and this oath was the lawful evidence on which the judgment was based, and not any proof submitted to that Court that he owned more than 3,275 bales.

The 136 bales belonged to the Richmond I. & E. Company.

In his letter of Sept. 24th, 1865 (R. p. 15), G. B. Lamar stated that the marks of the cotton left with his son by Hambleton, agent, who was the agent of the Richmond Im. & Ex. Company, (R. p. 23), were E. T. A. & X. Y. Z., which are the marks of the 136 bales mentioned in the "journal entry" (R. p. 12) to have been paid for by the United States. Now, the marks on the cotton are the signs by which it is bought and sold and transported and known (R. p. 24). These marks, therefore, identify the cotton

recovered as the cotton of Hambleton, agent of the Richmond Im. & Ex. Company.

But besides this proof of identity by the marks, there are several other signs which confirm this identity that will make it evident to all, even to those not conversant with the customs of trade :

1. Both the Hambleton cotton and the 136 bales were stored in 1864 ; (R. p. 24) for the first ; and (R. p. 20) for the second.

2. Both were stored in Lamar's warehouse ; (R. p. 29) for the Hambleton cotton ; (R. p. 205 taken with p. 203) for the 136 bales.

3. Both were stored with C. A. L. Lamar ; (R. p. 29), for the first ; and, (R. p. 20), for the second.

4. The owner of both resided in Richmond, Va.; (see R. p. 34) for the former ; and (R. p. 20) for the latter.

5. On both, advances had been made ; (R. pp. 26 and 27 ; items 2, 3, 4, 5, 6, 7, 8, 9, 12) for the former ; and (R. p. 205) for the latter.

6. On both, advances were made by C. A. L. Lamar, and not by G. B. Lamar ; (R. p. 20) for the former ; and (R. p. 205) for the latter.

7. On both there were dues for storage (R. p. 27, Item 10) for the first, and (R. p. 15) for the second.

8. On both there were due for compressing (R. p. 27, Item 6) for the first, and (R. p. 15) for the latter.

9. Both were rebagged in whole or in part (R. p. 27, Items 8 and 9 for the bagging and rope used for this) for the first ; and (R. p 205) for the second.

10. On both these were dues for drayage (R. p. 27, Item 11) for the first, and (R. p. 20) "cartage" for the second.

11. On both freight was paid (R. p. 27, Item 12) for the former, and (R. p. 205) for the latter.

12. About both a letter had been written since the war ; (R. p. 15) for the first, and (R. p. 205) for the second.

13. Both replies to this letter said the cotton had been taken by the military forces of the U. S., (R. p. 15) for the first, and (R. p. 205) for the second.

14. Both replies to this letter said there were advances due on the cotton. For the first, (R. p. 15); and, (R. p. 205), for the second.

15. In both, requests were made for payment of dues (R. p. 15), for the first; and, (R. p. 205), for the second, because declining payment implies a demand for it.

16. Both were upland cotton and not Sea Island (R. p. 23), because bought at Augusta, more than one hundred miles from the sea; (R. p. 12), for the first; and (R. p. 20) for the 136 bales.

So many minute coincidences place the identity beyond dispute.

There is, however, one apparent disagreement. The solicitors of G. B. Lamar, in the petition drawn up and signed by them (R. p. 56), and presented April 17, 1872, mentioned that "136 bales of the cotton claimed were held on account of —— Holland, of Richmond, Virginia," when they should have said "Hambleton." But it was shown on the trial that careful inquiry had been made for such a person as Holland, in Richmond, and no such person was found (R. p. 26, ans. 24) and (R. p. 48; ans. 43); and no such name is to be found in G. B. Lamar's papers (R. p. 28), while the name of Hambleton is mentioned by G. B. Lamar in his papers in connection with this cotton (R. p. 15 and R. p. 29).

Besides this explanation the solicitors may have made the mistake from not reading correctly the name of Hambleton in G. B. Lamar's letters to them; (G. B. Lamar would not have made it, for he knew, as is shown by his letter, Sept. 24, 1865 (R. p. 15), and by his letter of June 2, 1874 (R. p. 21), that the name of the agent who stored the cotton with his son was Hambleton) or by the printer who printed their brief, mistaking the name written by the solicitors, cannot now be known; but the likeness of the letters in the two names is such, that the one might be mistaken for the other in any manuscript where the handwriting was not good; and if so, this likeness would become a confirmation instead of an objection.

ASSIGNMENT.

The property in the proceeds of these 136 bales belonging to the Importing and Exporting Company of Richmond having been assigned to the present claimant by all its Directors, and their charter having vested in their directors all its corporate powers (R. p. 35), all their rights have passed to the claimants.

CHARLES MCCAY, *Claimant.*

109-235

SUPREME COURT U. S.
OCT 29 1923
WM. R. STANSBURY, Clerk.

Supreme Court of the United States.

OCTOBER TERM.

No. 882.

G. DeROSSETT LAMAR, executor of GAZAWAY B. LAMAR, deceased, Appellant,

vs.

CHARLES F. McCAY, Appellee.

Appeal from the Circuit Court for the Southern District of New York.

BRIEF FOR THE APPELLEE.

By SHELLABARGER & WILSON.

THOMAS McGILL & CO., PRINTERS, WASHINGTON, D. C.

Supreme Court of United States.

G. De ROSSETT LAMAR, Executor,
vs.
CHARLES F. McCAY.
} No. 882.

Brief for the Appellee by Shellabarger & Wilson.

We shall rely upon, as the chief argument in this case for appellee, that filed by Mr. Herbert, and beg that any material omissions which this brief may present may be ascribed to that fact.

MR. DICKERSON'S "FIRST ISSUE."

Mr. Dickerson's argument opens with what he has named "First Issue," and which is rather "a mass of things but nothing clearly." It seems mainly to be a repetition, here, of what was urged in the court below, and which the opinion below (R. 210,) states in substance thus: That since the bill alleges that Gazaway B. Lamar received this cotton in the capacity of administrator of his son C. A. Lamar, and the proofs show he did not receive it in *that* capacity, therefore this failure to sustain, by the proof, this part of the bill is fatal to the right of recovery; and the brief (pp. 9, 10) pleasantly suggests that this is so "unless the law is changed" regarding agreement between things *allegata* and things *probata*.

This "First Issue" has in it two or three other things; such as that complainant put in evidence the account be-

tween the "Richmond Importing and Exporting Company" (and which we will herein, for brevity, call "Richmond Company,") and Charles A. L. Lamar, for the purpose of showing that the latter's *administrator* was liable; also that this shows an unsettled account between said Charles and said Richmond Company, which makes Charles a necessary party; also that the court below blundered in allowing the recovery as one against the *surviving partner* (Gazaway) of said Charles, when, if such partnership had existed, the bill should have so averred, and defendant been given opportunity to traverse this, and also to have settlement of partnership equities.

Such are the points put into the "first issue." Now, with very real respect for the learning of Mr. Dickerson, we submit that in all these points he is wholly wrong—and wrong, not because the law of *allegata* and *probata* "has changed," but because he misconceives, or, at least, misstates the *scope* and structure of this bill, and the ground on which it puts the right of recovery.

Please carefully, and once for all, note what this bill does *not* do:

(*a*) It does not seek anything against Charles Lamar, or his estate; neither because of any contract, express or implied, nor of any partnership with Gazaway, nor because of any conversion or tort by him, nor in any other capacity whatever; and Charles and his estate are wholly unaffected, except as he became a conduit, through which, on its way from the original vendor, this "special lot" of cotton passed and was deposited; such depositary being the "*agent and fiduciary*" (R. 1) of said "Richmond Co."

(*b*) Again. This bill does not, as against Gazaway or his estate, seek, or attempt, to charge him or his estate on any contract, or conversion, or tort, or partnership, nor otherwise than as the man who had become the recipient of this "special lot" (R. 1) of cotton by becoming the pos-

sessor of its proceeds, as the bill alleges, (paragraph 3, p. 1,) as "*the agent and fiduciary*" of said company.

ABSTRACT OF THE BILL.

But now note, on the other hand, what the bill *does* explicitly and most distinctly put forth as making out the right of recovery in equity. They are these so far as relate to the present point:

(1.) That Richmond Co. was purchaser and owner of certain cotton. (Par. II, R. 1.)

(2.) That Hambleton, *as agent and fiduciary of and for said "Richmond Co.,"* received, through orator, for said co., several hundred bales of cotton at Augusta, which he shipped thence to said Charles at Savannah, "who received it from Hambleton as the property and estate of said company, *and ever thereafter held the same for its use and benefit.*" (R. 1, par. 2.)

(3.) That in this cotton so shipped was "a *special lot* of 244 bales," so purchased by Hambleton, "as *agent and fiduciary of the said company,*" and deposited with said Charles, who subsequently died, and his father, Gazaway, administered on his estate, and in that capacity came into possession of the cotton, and ever after retained it or its proceeds as legal representative of said Charles, AND AS THE AGENT AND FIDUCIARY OF SAID COMPANY AND OF ORATOR." (Rec. 1, par. 3.)

So that here the bill *expressly* avers the receipt by Gazaway to have been *in trust, &c.*

(4.) This cotton was seized by the United States and sold, and the proceeds put in the treasury. (R. 1, par. 4.)

(5.) That said Gazaway, out of whose possesion said seizure took the cotton, subsequently brought suit for said proceeds. (R. 1, par. 5.)

(6.) That among other portions of said 244 bales so held by Gazaway were a lot of 69 bales marked "E. T. A." or

"E. T. Y.," and a lot of 67 bales marked "X. Y. Z.," making 136 bales, which had been delivered by orator to Hambleton, and which *was held in trust for use and benefit of said Co. and of orator.* (R. 108, par. 6.)

(7.) That amongst others Gazaway sued for said 136 bales "*so held in trust as aforesaid.*"

(8.) That in said court Gazaway, amongst other things, presented a summary of the cotton sued for, 3553 bales, which summary he divided into 28 parts or lots, and in lot No. 26 he refers to said 136 bales *so* placed in hands of said Charles in the words found in No. 26, R. 205. (R. 2, par. 8.)

(9.) That Court of Claims rendered judgment in favor of Gazaway for large part of said cotton, to wit, for 91 bales of Sea Island, at $131.79, (R. 2, par. 9;) 3,184 bales of Upland, at $175.33, making $579,343.51.

(10.) That the 136 bales above described were included in this judgment at $175.33, amounting to $23,844.88. (R. 2, par. 10.)

(11.) That April, 1874, Gazaway was paid whole of said judgment, who then received said $23,844.88 *in trust* to the use and benefit of said co. and orator, which has ever since remained in hands of said Gazaway or this defendant as his legal representative "*in like trust.*" (R. 2, par. 11.)

(12.) That said co. knew not of said recovery until the advertisement in Richmond paper, (R. 3,) where Gazaway advertises that he had received from U. S. pay for two parcels of cotton, put by Richmond parties into said son Charles' hands, and on which charges for advances, &c., were paid by Charles, and asking owner to come and pay charges and get balance. (R. 2 and 3, par. 12.)

(13.) That on seeing this advertisement co. applied to Gazaway and made known their rights, and Gazaway admitted he held said proceeds of said 136 bales, but would not pay; and Gazaway died during this correspondence,

and his son G. De Rossett Lamar was qualified as his sole executor, and as such received and holds the said $23,844.88, *the proceeds of said co.'s cotton.* (R. 3, par. 13.)

(14.) That the co., since Gazaway's death, has assigned the claim to orator. (R. 3, par. 14.)

(15.) That defendant refuses to pay over this money, though admitting its possession, and that the books, &c., of said Charles, which contain the evidence of the receipt of the cotton by Charles, and which came into the hands of defendant's testator, are under control of defendant and not accessible to orator. (R. 3, par. 15.)

(16.) That defendant, who, as executor, holds said $23,844.88, so due orator, is in hazardous business, &c., &c., and danger of loss of said money. (R. 3.)

(17.) That co. and orator, at all times ready to pay and tender to Gazaway and defendant "all proper charges and advances on said 136 bales, but Gazaway nor defendant ever, though requested, stated an account showing said charges, and orators cannot do so for want of books, and hence entitled to discovery, &c. (R. 14, par. 17.)

(18.) That *by reason of the premises* defendant, as executor, is indebted to orator as assignee, &c., in $23,844.88, and interest from 19 April, 1874, less charges, costs, &c. (R. 4, par. 18.)

(19.) Tenders bond of indemnity. (R. 4, par. 19.)

Then declares no remedy save in equity, where alone discovery can be had—"AND THE TRUST CREATED AND DECLARED IN FAVOR OF YOUR ORATOR AS ASSIGNEE OF SAID COMPANY." (R. 4.)

PRAYER

is for subpœna; for injunction against defendant holding, &c., this $23,844.88 *so held in trust;* for its payment; for discovery of books as to cotton and the advances, and that on final hearing may have decree against defendant, as executor, for $23,844.83 and interest, "*less such sum as*

upon an accounting may be found due for costs, charges and advances on said cotton, together with his costs and disbursements herein, and for other relief."

SCOPE OF BILL AND WHAT THEREUNDER RECOVERABLE.

Such is the exact substance of this bill, and it is as to this sort of a bill that Mr. Dickerson says there can be no recovery, because the bill was unproved in the points as to Gazaway being the administrator of his son Charles, and as to his having the books, &c.

In reply to such position we state the following propositions:

1st. That the entire *scope* of this bill is one which asserts an *ownership* by said company, and by orator, as its assignee, in a named "specific lot" of cotton of 136 bales, which it traces from hand to hand, through orators, Hambleton's, Chas. A. L. Lamar's, Gazaway B. Lamar's, to that of the defendant; that into each of these hands it and its proceeds came, *impressed with a resulting trust*, arising from the said ownership and from the *fiduciary* character in which each successive hand took it; that this trust was qualified with and by a lien or claim for advances, costs, charges, &c., incurred by the "fiduciaries" on behalf of the cotton; that the *identical and specific lot* of cotton and proceeds thereof are traced and identified as reaching, through said Hambleton, Charles and Gazaway, the hands of said defendant, *so impressed with said trust;* and this being the *scope* of the bill, all averments about Gazaway being the administrator of his son Charles, and about his receiving this cotton as his legal representative, become and are mere *surplusage* and narrative, and can be stricken out, leaving the bill to aver simply that Gazaway *did become possessed* of said property, whence it passed to defendant; and thus stricken out, the *bill is perfectly good for the claimed relief.*

2d. The ground of equitable jurisdiction which it is based upon, and invokes, is *not*, as Mr. Dickerson intimates, "discovery" merely or chiefly; but, on the other hand, is the familiar one of setting up a trust and taking an account. Oelrichs *v.* Spain, 15 Wall., 211.

No Partnership Accounting Required.

Another proposition is that it is not true, as Mr. Dickerson asserts, that, as against this "specific" trust fund, so traced into these various hands, there can be or are any rights or equities possible to be set up, arising out of the state of partnership accounts, or any out of other accounts, as between said Charles and his father, Gazaway, or any other party; and the only "*accounting*" permitted by the equity disclosed by this bill is that which was and is requisite in order to ascertain, (1) how much the trust property has yielded to defendant; and (2), what costs, advances, &c., the respective parties, through whose hands this property passed, have incurred *on account of it*, and which, on the principles of equity, a trustee or bailee may make a specific charge *against and lien upon the trust fund or property.*

These propositions seem to us so elementary and settled as not to be doubtful so far as their soundness depends on the principles of law or equity.

For example, the first proposition rests on the idea that an owner of property put into the hands of a trustee or agent may, where the trust property has been misapplied, or, as in this case, converted while in the trustee's hands, follow this specific property and also its proceeds. In other words, and the words of the Supreme Court in Cook *v.* Tullis, 18 Wall., 341:

"If property, in its original form and state, is covered with a trust in favor of the principal, no change of that state and form can divest it of such trust and give to the trustee, or those who represent him in right, any more valid

claim in respect to it than he previously had; and it makes no difference in reason or in law into what other form, different from the original, the change may have been made for the product of, or substitution for, the original thing still follows the nature of the thing itself as long as it can be ascertained to be such, and that right only ceases when the means of ascertainment fail." * * * * "The real question in both cases" (of purchase with proceeds of sold trust property, and of an exchange of the trust property for other property,) "is what has taken the place of the property in its original form. Whenever that can be ascertained the property in the changed form may be claimed by the original owner or cestui que trust, *and assignees and trustees in bankruptcy can acquire no interest in the property in its changed form which will defeat his rights in a court of equity.*"

The application of this doctrine to the present case, and to our first and second above propositions, is obvious and conclusive, to wit, that a *cestui que trust* may follow, into all hands, and through all changes of form, his trust property as long as it can be identified; and may recover it, in equity, as against *all* holders and assignees (save valid liens); and that, hence, no partnership equities or other claims, as between said Charles and Gazaway, or any one else, can be set up to defeat this estate of such owner and beneficiary.

WHAT IS THE SUBSTANCE OF THE BILL'S ALLEGATA?

Another proposition, in regard to "first issue" in opposing brief, which we make in view of the foregoing abstract of what this bill is, we state as a corollary of the preceding ones, to wit, that here the *gravamen* of the bill being to *trace* and *identify* specific trust property from hand to hand into that of the defendant, and to recover, *in specie*, this *very* property in its new form of the money it produced, therefore the true and real allegata of the bill are the averments which show the ownership, the trust, and the

receipt thereof; and, therefore, *how* the receipt came about, whether in virtue of administratorship or otherwise, are averments wholly immaterial and surplusage, because *no* method of receiving, whether by assignment in bankruptcy, or by will, or otherwise, can disturb or change the right of the *cestui que trust* to identify, follow, and recover his own.

This therefore answers, as we submit, completely, all said by Mr. Dickerson about being deprived of denying partnership, setting up partnership, equity, etc., etc., (p. 9.) The bill went for the "specific lot" of trust property and *its identified* proceeds, and for *nothing else*, and against such a claim as *this* nothing of the kind here pointed out in the opposing brief can be *averred* or proved. Says the Supreme Court (18 Wall, 342): "ASSIGNEES AND TRUSTEES IN BANKRUPTCY CAN ACQUIRE NO INTEREST IN THE PROPERTY, IN ITS CHANGED FORM, WHICH WILL DEFEAT HIS RIGHTS IN A COURT OF EQUITY." This is exactly and conclusively in point.

Still another proposition, (but one included in the preceding,) is that since the gravamen of this bill is to recover this *specific* and *identified* trust property, and since the entire grounds of the recovery are fully disclosed by the bill, and no part of its object is to charge the estate of said Charles Lamar, and thus the averments about Gazaway being the legal representative of said Charles' estate become not only "subordinate," (7 Otto, 161,) but absolutely *immaterial*, therefore the case is more than within the case of Wallace *vs.* Loomis, 7 Otto, 160 and 161, where the bill *averred and relied on agreements to pay in coin*, and the decree was for payment in "*lawful money*," and it was there strenuously insisted that the decree was erroneous, because the *allegata* did not agree with the proofs and with the decree; but the court refused to adopt this view for the conclusive reasons stated on pages 160 and 161, that the variance was in a matter "*subordinate*"—that this was not of the "*gravamen*" (p. 160) of the bill—that the whole

case was in the bill fully stated, and the variance not material; or if material, should have been objected to by demurrer or answer, and could not be *now* made available; and so the court affirmed the decree.

This is a very much stronger case of variance than the one at bar—the one at bar being no case of variance at all, but simply a case of failure to prove the wholly immaterial averment that Gazaway got the trust property as administrator, whereas the proof was that he *got* it, which is all that was requisite in order to our recovery.

ORAL AND EXTRINSIC EVIDENCE TO SHOW WHAT WAS ADJUDGED.

With one additional proposition we leave this rather multitudinous "first issue" of Mr. Dickerson. The proposition is this: That the averment of the original petition in the Court of Claims, averring that the petitioner owned and possessed 3,275 bales of cotton stored in Savannah, (R. 52,) and the averment in the first amended petition, (R., p. 54,) that claimant was the owner of 4,185 bales of cotton stored in Savannah, and especially the averment in the last amended petition filed the 20th of May, 1873, (R. 58,) (and which it is expressly averred on its face to be a "petition" in lieu and as a substitute for all other petitions and amendments heretofore filed in the case,) that the claimant was the "*owner*" and in possession of 3,275 bales stored in Savannah, and that these bales were taken from him by the United States, etc., etc., as contained in such petitions, are sufficient averments to entitle the claimant to recover for the 136 bales claimed in this case, provided he proved these 136 bales by his testimony in the court. And also, that if this court is satisfied by the evidence in the present case that they were included, then this court can not try the question whether the evidence in the Court of Claims was sufficient.

In other words, the averments of these petitions are *suffi-*

cient averments to entitle the plaintiff to prove and recover the said 136 bales, provided they constitute a part of the 3,275 bales. In still other words, the bill has sufficiently declared for the 136 bales, provided they are a part of the cotton described and claimed in the petition.

It is equally certain and established law that extrinsic evidence may show that they were included, as is stated by the Supreme Court in these words in Russell *vs.* Place, 4 Otto, 606:

"If there be any uncertainty on this head" (as to what was determined in a former suit,) "in the record, the whole subject-matter of the action will be at large and open to new contention, unless this uncertainty be removed by extrinsic evidence showing the precise point involved and determined. To apply the judgment and give effect to the adjudication actually made when the record leaves the matter in doubt, such evidence is admissible."

Here, therefore, we have a case where it was perfectly competent to prove, by extrinsic evidence, what was determined in the case in the Court of Claims. In other words, it was perfectly competent to establish in the Circuit Court of New York in this case by extrinsic evidence, what bales of cotton were recovered for in the Court of Claims. To this end the claimant, Lamar, introduced the account between Charles Lamar and the Richmond company which is named in Mr. Dickerson's brief (p. 9); and for this purpose it was introduced by the claimant as evidence in the Court of Claims. In other words, it was an account showing that Charles A. Lamar and the Richmond company *were not strangers to each other;* had had business transactions; that these business transactions related to *cotton*, and thus to establish, or tend to establish, the fact that the cotton claimed in the case advertised by Gazaway in the Richmond papers was the cotton of the Richmond company. The circumstance that Charles Lamar and this Richmond company had dealings in cotton together was a

powerful circumstance tending to establish, along with the other evidence, the fact that the Richmond company was the "owner" of the advertised cotton. For this purpose it was competent, and it was not introduced for the purpose, as Mr. Dickerson says on page 9, of showing that Charles A. Lamar's *administrator* was liable to the Richmond company.

Nothing is claimed anywhere in the bill of the estate of Charles A. Lamar, as we have already remarked, and the introduction of this account is simply for the purpose of tracing this cotton first to Charles A. Lamar, and thus through his father to the defendant.

This account was also competent to show what amount was chargeable against the 136 bales for advances.

Court Below did not Base Decree on Partnership Rights.

The remark of the opposing brief, p. 9, that the court below "decided the case * * * by holding his estate liable upon the theory that he was a partner of C. A. L. Lamar, and that the cotton in question came into his hands in that capacity," is a grave mistake of fact as well as of law. The court did not decide the case on the theory that Gazaway received the cotton as administrator or as partner, but, on the contrary, expressly refused to put the decision on that ground. The court says (R. 210): "*How this cotton came into the hands of Gazaway B. Lamar is wholly immaterial in this case.* The statement is mere inducement. The *material* facts are that the cotton belonged to the Richmond Importing and Exporting Company, and that the testator received the avails of it, and that the orator has succeeded to the right of the company to the avails. The bill ought not to fail when the *material* allegations are proved."

Mr. Dickerson's Second and Third Issues.

Mr. Dickerson's second and third issues so blend that we will somewhat blend them in this reply. His "second issue" is stated in these words: "The bill charges that G. B. Lamar sued for and claimed the said 136 bales last above mentioned, and so held in trust as aforesaid, and that averment is denied." Under this head he proceeds to show that the petitions, four in number, nowhere claimed or contained averments which authorized a recovery for the 136 bales.

Then, from page 10 to page 14, inclusive, he proceeds in the endeavor to show that neither of these four petitions covered the 136 bales sued for.

This "second issue" of Mr. Dickerson must mean to allege that the pleadings were such as that Mr. Lamar, the claimant, *could not, as a matter of law,* give in evidence proof of, and recover for, the 136 bales.

Under what he calls the "third issue," as also under the second, he attempts to show, as a matter of *fact,* (outside the question of pleading, or of what the petition claimed,) that the 136 bales were *not* recovered for; but for the purpose of avoiding the confusion of these two questions as they are confused in Mr. Dickerson's second and third issues, we will take up separately the question what, as a matter of *law,* under the averments of the pleadings, could have been proved and recovered for in the case, and will come, afterwards, to the question what, as a matter of *fact,* was proved and recovered for in the case.

Although the contents and characteristics of none of the petitions are material, except that of the last, filed the 20th of May, 1873, (R. 58,) (because that one was substituted for and took the place of the rest—see Rec. 58—which is admitted by Mr. Dickerson, p. 12,) yet it may be convenient here to give a synopsis of *all* the petitions in the respect here involved as to what they cover.

Abstract of Petitions in Court of Claims.

ORIGINAL PETITION FILED APRIL 1, 1868. (R., p. 52.)

Avers:

That claimant owned and possessed.....4,185 bales
Made up as follows:

Seized in Savannah.....	3,275
" near Thomasville (522).....	484
" " Tallahassee.....	426
	4,185

This petition is sworn to by Mr. Lamar.

FIRST AMENDED PETITION, FILED MAY 12, 1869. (R., p 54.)

Avers:

Claimant owned and possessed.....4,185 bales

This petition gives no details as to the lots which constitute and make up the 4,185 bales. It avers that all this cotton was stored in Savannah, and is sworn to by the attorney, Mr. Peck.

SECOND AMENDED PETITION, FILED APRIL 16, 1872. (R., p. 56.)

Avers:

Possession of.....4,185 bales

Absolute owner in own right of.....3,793 bales
And held as commission merchant..... 392

Of the 392.....256 held for Thompson, and
136 " " Holland, of Richmond.

392

All through this petition it calls the entire lot of 4,185 bales "HIS" cotton.

This petition is sworn to by nobody, and was, as stated by Mr. Dickerson, bottom of page 12, withdrawn, and nothing in the record shows that G. B. Lamar had anything to do with its preparation or contents.

THIRD AMENDED PETITION, FILED MAY 20, 1873. (R. 58.)

Avers:

Claimant owned and possessed.....		3,701 bales.
Of which stored in Savannah	3,275 bales.	
Seized in October and November, 1865, Tallahassee.....	426 bales.	
	3,701 bales.	
Omitted in this petiton but claimed in the first.....		484 bales.
		4,185 bales.

This 4185 bales being the amount in the first petition he swore he owned:

Avers that Cheever interested to extent of one-half of profits of sales in.....	446
Avers that Cheevor and C. A. L. Lamar were interested each to the extent of one-third of profits in.....	2,371
Avers that claimant bought and paid for on account of one Thompson or Martin.....	256
	3,073 bales.
This leaves of bales about which no special title or interest is averred.....	628
	3,701 bales.

Such is the substance of these petitions so far as relates to the present point.

What in Law was Provable under These?

As we are now on the question what, under the law, as administered in the Court of Claims, may have been proved under these petitions, it is useless for us to consider here what is contained in any one of the petitions except the last, upon which, as Mr. Dickerson says at the bottom of page 12 of the brief, the case was tried.

We therefore look to the averments of this last petition and ask was it competent and possible, as a matter of *law*, to have proved and recovered for the 136 bales which are the subject-matter of this suit? To this question Mr. Dickerson answers, no. The words are:

"Of course the record of the suit is the best evidence of what the suit was. It establishes beyond the possibility of question that no such suit was ever brought by Gazaway B. Lamar. The pleadings in the Court of Claims are informal, but they raise a perfectly clear and distinct issue."

He then proceeds, under what he calls the "second issue," with an analysis of the language of the four petitions. He puts in italics or in capitals all averments alleging "ownership" in the claimant.

Without here confusing the discussion by introducing all the figures that are introduced under the "second issue," it is sufficient for us to state that the grounds upon which he relies to show that the petition does *not* cover, nor, as a matter of law, authorize the recovery for, the 136 bales, are:

First. That the statute of 1863, "the captured and abandoned property act," requires the suit to be brought by the "*owner*" of the property, and suffers a recovery by no one else;

Second. That, since these petitions were required by said statute to aver "*ownership*" of the cotton sought to be recovered for, and since the 136 bales were not "*owned*" by

Mr. Lamar, therefore it appears from the record that he could not and did not declare for them; and

Third. That, since the unsworn petition, filed April 16, 1872, (R., p. 56,) specifies 3,793 bales as "owned absolutely" by claimant, and 392 as bales in which he only claimed a special or qualified interest, and as the last petition, filed May 20, 1873, specially specifies lots in which claimant described a qualified interest, that, therefore, *inferentially*, no *other* lots were included in the petition in which there was a *qualified* interest, except the ones specified, and the 136 bales are not amongst these so specified.

Such is the exact substance and force of the position of the opposing brief so far as it relates to the question what was *declared* for, and what could, under the *law*, be recovered for.

Our first reply to this position of Mr. Dickerson is, we submit, one that is absolutely conclusive. It is that the *law* of the Court of Claims, as it stood at the time of this judgment, *was precisely the reverse of what he asserts it to be.* This is established by simply turning to the decisions and holdings of that court then in force and unimpeached.

The Supreme Court of the United States, in Mrs. Carroll's case, (13 Wall., 151,) had decided in 1871, that under this "captured and abandoned property act" an administrator might sue in his representative character as owner and recover.

The Court of Claims, at the December term of 1872, in the case of Villalonga against the United States, (8 Court of Claims, 452,) quoting Mrs. Carroll's case, decided what is expressed in the following words:

"A factor in possession, with a lien upon the property for advances made, is entitled to hold the property, and may sell it to repay advances, or may maintain an action of trover or replevin, to the exclusion of an action by his principal, and he will become the trustee of the original owner to the extent of his residuary interest. *Therefore,*

under the decision of the Supreme Court in Carroll's case (7 Court of Claims, 255,) *holding that an administrator in possession is the* OWNER *of captured property within the meaning of the act, it is now held that a factor in possession with a lien upon property for advances made is the* OWNER *within the meaning of the act, and that he may maintain an action for the proceeds in the Treasury.*

"*The factor on recovering will be liable to his principal for the surplus after paying his own advances as if this suit were an action of trover.*"

The decision of the court in this case was made, as appears by record of the Court of Claims, *on the 2d of June, 1873, the very day on which Lamar's case was decided by that court.*

Hence, instead of its being true, as Mr. Dickerson so persistently and vehemently asserts, that under the law of 12th of March, 1863, as understood and administered in the Court of Claims in 1873, Mr. Lamar could *not* recover on such a title as he held as a trustee and factor in these 136 bales because he was not their "*owner*," and that Mr. Lamar and his counsel *knew* this at the filing of their last petition, the fact was exactly the reverse. On the very day of this Lamar judgment, (2d June, 1873,) the court laid down the exact law which Mr. Lamar and his counsel asserted from the first and in every petition, to wit, that a "factor" or trustee *could* recover as "owner" for the *entire* proceeds; and so the law stood until more than a year after this judgment was paid off, in April, 1874, (R. 7,) when the Villalonga case was reversed, as reported in 23 Wall., R. 35, at the October term, 1874.

So that, when the amended petition was filed, May 20, 1873, Mr. Denver, who was counsel for claimant in *both* Villalonga's and Mr. Lamar's case, and his client Lamar *believed* and the Court of Claims (as their decision on the 2d of June, 1873, in Villalonga's case proves) *believed*, and the law of that court *was*, that Mr. Lamar was the "owner" in the sense of the act of 1863, of these 136 bales.

It will, we think, hardly be asserted, even by Mr. Dickerson, that the *conclusiveness* of the title of the United States in the cotton, made by its payment of this *final and unreversed judgment*, is disturbed or affected by the fact that *afterwards* the Supreme Court held that a totally *different* judgment (Villalonga's) was erroneous.

And this, we respectfully submit, is an answer conclusive to all said in the opposing brief about "*ownership*," in so far as that affects the *legal* question of the *power* or *right* of recovery by a bailee or factor. As the law then stood this right was declared by that court, and was absolute, full, complete, and understood!

The only other question, then, to be considered, under this head, is whether the petitions are so drawn as that the 136 bales are excluded from this legal right to come in if declared for; or, on the other hand, are the petitions broad enough to let them in, provided the proofs authorize them to come?

In considering this purely *legal* question, whether the petition was broad enough to suffer them to be recovered for, please observe that the matter of *inference* or *presumption*, so persistently dwelt upon in the opposing brief, and which inference is claimed as arising from the fact that in two of the petitions (to wit, the unsworn one and the last one) special mention is made of cotton in which claimant alleged a *qualified*, as distinguished from an "absolute," ownership, and from which the opposing brief *infers* the 136 bales are excluded from the petition, has no application or place. That *inference* may have its place when it comes to the question of *fact* what was proved or recovered for; but on the *law* point, what *could* be proved, it has no manner of application.

Stated in another way, the question is whether the averments of this amended petition, on which the trial was had, was broad enough to give the court *jurisdiction* over, and to authorize the claimant to avail himself of, the right of

recovery, as trustee, for, the 136 bales, as laid down in t Villalonga case?

That these averments of the last amended petition *are* broad enough to entitle the claimant to prove his *qualified* title in, and to recover for, the 136 bales, we establish by the following considerations:

First. We state, first of all, and especially, the rule applicable to pleadings, and the administration of justice, in the Court of Claims. This rule is accurately stated in the following words from 15 Court of Claims Reports, 342, where the court says:

"It" [the Court of Claims] "is a court of limited jurisdiction, but of broad powers within the scope of its jurisdiction, created in order to enable honest claimants to reach the treasury, and it is not allowed to interpose purely technical barriers between them and the payment of just claims. The Supreme Court has held that the Court of Claims in deciding upon the rights of claimants is not bound by any special rules of pleading." (Burns' case, 12 Wall., 246.)

In Paddleford's case, (9 Wall., 531,) the chief justice, in delivering the opinion of the Supreme Court, said:

"The captured and abandoned property act of March 12, 1863, under which the claim in this case was made, has been frequently under the consideration of the court. In the several cases decided during this term * * * * it has been held to be remedial in its nature, requiring such a *liberal* construction as will give effect to the beneficent intention of Congress."

The case of the United States against Burns, (12 Wall., 246,) was one where the question was whether proofs could be made and a recovery had under a petition relying upon a *joint* contract when the right of recovery in the case was found to exist only in favor of *one* of the parties, and this suit was prosecuted under this same "captured and abandoned property act." The court says, page 254:

"The technical rule of pleading in an action in a common law court, by which a contract with two must be prosecuted in their joint names, if both are living, has no application to a case thus situated. And the Court of Claims, in deciding upon the rights of claimants, is not bound by *any* special rules of pleading."

Then in the case of Clark against the United States, (5 Otto, 539,) the petition was upon an express contract, which contract the court found to be "absolutely void," and not one upon which any recovery could be had, because it was not in writing, and the question was made that no recovery could be had under the petition, because it relied upon an *express* contract, and there was no count in the petition upon an *implied* contract for the use of the vessel, which was had by the Government. In reply to this objection the court says (page 543):

"If objected that the petition contains no count upon an implied contract for *quantum meruit*, it may be answered that the forms of pleading in the Court of Claims are not of so strict a character as to preclude the claimant from recovering what is justly due to him upon the facts stated in his petition, although due in a different aspect from that in which his demand is conceived."

The result of all the cases is precisely that which is here stated explicitly by the Supreme Court—that the forms of pleading in the Court of Claims do not preclude a claimant from recovering what is justly due him upon the facts stated in the petition, although there be no count in the petition explicitly pointing to the item which the proofs show he is entitled to recover. (5 Otto, 543.)

We respectfully submit that, under these rules of construing pleadings and administering the law under the captured and abandoned property act, there can be no doubt of the claimant's right to give evidence in the Court of Claims proving the seizure and appropriation by the United

States of these 136 bales of cotton, it being part of the 3275 bales named in the petition, in which the claimant had the qualified interest described by him in his brief. (Rec. 205, paragraph 26.) Observe the following things in regard to this last amended petition: (Rec. 58.)

As to the entire lot of cotton sued for, to wit, 3,701 bales, the averment is that he was the "owner and the possessor thereof." In other words, as to *all alike*, broadly and generally the allegation is that he "owned" it *all* and possessed it *all;* so that, if the law be that a *special* property could not be recovered for, where the averment is of *general* ownership, then no recovery could be had in this case for any such cotton as that described at the end of the petition, (R. 60,) where he says that Cheever had an interest to the extent of half the profits in 446 bales; that Cheever and Charles Lamar had an interest to the extent of one-third each of the profits in 2,371 bales. When the general and *principal* allegation of the petition is "ownership" of the *entire* lot of 3,701 bales, certainly the fact that he shows his "ownership" as to a *part* of this to have been *qualified* by the interest of Cheever and Charles Lamar therein, is not the averment which enables him to recover as to these qualified interests. In other words, what in the petition authorized the recovery for any part of the 3,701 bales were the general averments of the petition, and not the descent to details at the top of page 60; and under these preceding averments the qualified interests in the 136 bales, and in the two named at the end of the petition, were alike recoverable and recovered. The *substantial* averment of this petition, and under which the recovery is authorized, is accurately stated in the opinion of the court, page 210, folio 284, where the court says:

"The material facts in the Court of Claims were that claimant was the *owner* and possessed of the property; that it was seized by the United States; that it was sold and the proceeds put into the Treasury, and that the claimant was entitled to these proceeds."

It is incontestably plain, as seems to us, that, under these averments, according to the rules of pleading and construction above stated, and under the law as that day announced in Villalonga's case, the claimant was entitled to prove his 136 bales, and the fact that the petition failed to descend to particulars in regard to the interest of the claimant and of the party at Richmond in the 136 bales did not deprive the claimant of this right of recovery.

EVEN IF JUDGMENT FOR 136 BALES ERRONEOUS, THAT NOT NOW MATERIAL.

But, again, if the fact were that proofs were made and a recovery had in the Court of Claims for these 136 bales, as we shall hereafter see the fact was, then even if it was *erroneous* in the Court of Claims to allow such recovery under such a petition, then that error is immaterial. The recovery being *had*, the only essential fact remains that the defendant's testator and the defendant *received our money*. If there was error committed in recovering it under such a petition, that fact does not change the case. Again, if the fact be, as we shall hereafter see it is, that the claim was presented to the court and was by the court allowed, it is now *too late* to object to the introduction in the Court of Claims of such proof of such a claim under such a petition.

It ought to have been objected to, if objectionable, by the government, at the time the claim was presented, as not provable under such a petition. The words of the Court of Claims in the case of Padelford *vs.* United States, 4 C. C., 322, where the objection that a party ought not to have been allowed to recover under the petition, as it was brought *before* the expiration of the two years named in the said captured and abandoned property act (12 Stats., 820, sec. 3), are here exactly applicable, where the court says:

"In this case the United States, instead of taking the objection when the claim was filed, joined issue, concurred in the taking of testimony, made stipulations in relation to it, cross-examined witnesses adduced by the claimants in Georgia and elsewhere, continued the case from term to term for years, filed briefs, declared themselves ready for trial, and finally went to trial on the law and facts of the case, and withheld the objection now made till after the case had been twice argued, and then submitted it to the court for its decision."

We cannot suppose, therefore, that there is any doubt that if the fact be that this claim was presented for the 136 bales to the court, it was admissible under the petition.

And further, that even if not admissible, if it was even erroneous to admit it without amendment, then the objection ought to have been made at the time, and not being made, the court was authorized to give judgment for the claim, and if it *did* give judgment for the claim, and the defendant *has our money*, then the matter of error in admitting the recovery for the 136 bales is utterly immaterial. The court having indisputable *jurisdiction* of the *subject-matter* and of the parties, the judgment does not become *void* or lose any of its legal attributes and consequences merely because the petition failed to set forth the specific and qualified title in the 136 bales.

The Recovery Did Embrace the 136 Bales.

With these considerations submitted, we are now prepared to take the next step in this discussion. That one is, were the 136 bales, as a matter of fact, embraced in the judgment of the Court of Claims? This question of fact Mr. Dickerson considers under the "second and third issues," as he calls them, but mainly under the third. He begins the "second issue" with the remark: "Of course the record of the suit is the best evidence of what the suit was. It established, beyond the possibility of question, that no such suit was ever brought by Gazaway B. Lamar."

In regard to this remark that the record is the best evidence of what the suit was, we have only to remark that this court has had occasion repeatedly to consider the question how far the record of the court is conclusive upon the point, what was and what was not adjudicated in the case. We have already had occasion to remark upon this point. Referring to the case of Russell *vs.* Place, (4 Otto, 606,) it is plain from an examination of this case and the cases there cited, that it often happens that a record is not, as Mr. Dickerson says, the best evidence of what the suit decided, but is no evidence at all, except so far as it shows what *was possible to be decided;* and in every such case, as the court remarks, page 608—

"If there be any uncertainty on this head in the record," (whether a certain question was raised and determined,) "as, for example, if it appear that several distinct matters *may have* been litigated upon, one or more of which the judgment *may* have passed, without indicating which of them was thus litigated, and upon which the judgment *was* rendered—the whole subject-matter of the action will be at large and open to new contestation unless this uncertainty be removed by extrinsic evidence showing the principal points involved and determined.

"To apply the judgment and to give effect to the adjudication actually made, when the record leaves the matter in doubt, such evidence is admissible."

It is useless for anybody to deny that this record does *not* determine what lots of cotton made up the 3,184 bales of upland cotton which the record (p. 50) shows did enter into the judgment, and it is precisely *this* question which extrinsic evidence is allowed to settle according to the decisions last referred to. This record is no evidence *at all* in regard to that point, except in so far as the record shows that it was possible, as a matter of law, to prove and recover for the seizure of the 136 bales, and also except as the record shows, what evidence and argument was submitted to the Court of Claims regarding the lots which

made up these 3,184 bales of upland cotton recovered for. And it is to this intrinsic and extrinsic evidence tending to show what cotton composed the 3,184 bales of upland cotton that we now beg the attention of the court.

Notice of Appellant's Leading Points.

As a part of our enumeration of the proofs showing that these 136 bales *did* enter into the judgment of the Court of Claims, it is proper that we should notice some others of the leading features of the argument against this claim.

And it is due to counsel for appellee that any repetition appearing here, of what is in Mr. Herbert's brief, will be, in part, owing to the fact that there was no opportunity for counsel, in the conditions in which the respective arguments were prepared, either to see each other's arguments, or to compare views. But the repetition will, of course, be mainly due to the fact that two cannot, separately, discuss an entire case without presenting, in the respective arguments, the same matter to a considerable extent.

In entering upon the summary of Mr. Dickerson's grounds for asserting that the 136 bales did not enter into the judgment, we will omit to comment upon the *tone* of his argument, where he announces his positions to be "as certain as any possible certainty," (p. 18, &c., &c.,) and the things asserted by us and found by the court to be matters of astonishment, (p. 25, &c., &c.,) and wherein he characterizes this suit as "instigated" by "a speculator," (p. 25, &c., &c.,) and other matters like these. These qualities of the excellent argument of Mr. Dickerson hardly admit of any other notice than to say that when counsel adopt these methods, having such magisterial tone and such questionable manners, they cease to be persuasive of the rightness of their positions, and become indications of the feebleness of the cause which prompts such resorts.

And now, without following their order in Mr. Dicker-

son's argument, we state some of Mr. Dickerson's points in support of his denial that the 136 bales were recovered for.

(1.) It is not disputed, but, on the contrary, is by the opposing brief expressly admitted, that the way in which the court reached its judgment of $579,343.51 was by allowing for the 3,275 bales (brief, p. 14,) which are named in the court's finding of facts (R. 50), also in the original petition (R. 52), drawn up by himself (opposing brief, p. 12), and sworn to by Mr. Lamar; also in that last filed amended petition (R. 58), affirmed to by Mr. Lamar; also in Denver & Peck's brief (R. 196); also again in same brief 201, and again in same brief (R. 202). And it cannot be disputed that the way said sum recovered for was obtained, is that set out in the finding of facts by the Court of Claims, to wit:

3,184 bales of upland cotton, at $175.33, amount	$558,250 72
91 bales of Sea Island cotton, at $231.79, amount	21,092 89
3,275 bales	$579,343 61

So that whatever else is uncertain regarding what entered into this judgment, it is certain that this is the way the court reached its judgment.

(2.) The prime contention of the opposing brief is that the 136 bales is "expressly omitted," (p. 13,) (whatever that means,) from the petitions in Court of Claims. Now, if by the words "expressly omitted any mention," is meant that the petition *says* or *expresses* that the 136 bales are *not* claimed, then the reading of the petition shows the fact is not so, but the reverse.

(3.) If by "expressly omitted" is meant that the petitions fail to *specify* the 136 bales, whilst they name other lots in which claimant's title was "special" and "limited," thus raising the presumption that he named *all* the lots in which his title was a "qualified" one—as is the

chief contention on the other side—then the reply is as follows:

(*a.*) It is not true, as a matter of fact, as stated on page 14 of opposing brief, that *any* where Mr. Lamar swore that he "owned himself, free from any claim by any person whatever," the 628 bales named on said page 14, and which are obtained thus:

Whole amount sued for in last petition		3,701 bales
Cheever owned one-half of profits in...	446 bales	
Claimant Cheever and Chas. Lamar owned each one-third profits in...	2,371 "	
Martin's or Thompson's.....	256 "	
Described in last petition (R. 60) as "special" ownership.....	3,073	3,073
Leaving bales not *specially* described		628 bales

It is as to these 628 bales Mr. Dickerson avers claimant "swore he owned himself, free from any claim by any person whatever," in his last petition.

Now, as already stated, the fact is precisely the reverse of this, as a mere *reading* of the petition shows, to wit: That he not only totally omits to swear regarding these 628 bales, but he swears as to the *entire* 3,701 *bales* sued for, that he "*owned*" and possessed the *whole* 3,701 bales, and throughout the petition repeatedly speaks of the whole as "*his.*"

(*b.*) The entire force of the opposite argument, as one based on the facts that the petitions aver "*ownership*" in Lamar, and that the act 12th March, 1863, requires "ownership" in order to a recovery, is overthrown by the two considerations—first, the one above named, that under the law, as laid down by the court, (8 Court of Claims R., 453,) Mr. Lamar *was*, as a trustee, the "owner" of the 136 bales, *within the sense of the law*, and could so swear;

and, second, that it is express, on the face of the petition, that he *did* so swear as to the said 446 and 2,371 bales in which the petition shows he was *not the full owner*, and in which his partners had an equal interest with him. Mr. Dickerson asserts and insists that Cheever and Charles Lamar were "*partners*" in these lots, (p. 14.) And it is most familiar law that in partnership property neither partner is, *as against the other or as against partnership creditors*, the "*full and absolute*" owner; (12 Peters R., 221; 3 McLean R. 27;) and hence it is demonstrated that, when the first petition swears claimant "*owned*" the entire 4,185 bales sued for, (R. 55,) and when the second petition swears (by Peck) that he "*owned*" the 4,185 bales there sued for, (R. 54,) and when the third petition (not sworn) avers "*absolute ownership*" of the 3,793 bales there claimed, (R. 56,) and when the fourth petition, affirmed to by claimant, alleges "*ownership*" of the entire 3,701 bales there claimed, the claimant *did* include, in these quantities so sworn to be *owned* by him, partnership property, to an extent equal to 446 bales, plus 2,371 bales, as to which he was far from being the full owner, and in which his ownership was like to that in our 136 bales.

Thus it is incontestably fixed in this case, once for all, and this by the letter of the record, that the claimant and his counsel *do*, throughout the case, describe and denominate cotton wherein claimant was only a qualified owner, having a limited and special interest, as cotton "*owned*" by claimant.

(*c.*) But another and, if possible, more conclusive reply to the position which asserts that Mr. Lamar shall be *presumed not* to have included or *meant* to include in his petition the 136 bales in which he held only a qualified interest as a trustee, because where his interest was a qualified or limited one, he, in his last petition, so specifies, is this: that the record, in still another way, shows that the fact was and is just the reverse of this.

On pages 17 and 18 of record, item 7 of will, he names, amongst others, three lots of cotton as "now" (28th September, 1872,) before the Court of Claims, to wit:

"32 bales of Sea Island, *belonging to the estate of my son, C. A. L. Lamar.*"

"136 bales upland, bought by C. A. L. Lamar of F. S. Gue, *and paid for by him at* 16c. *per lb. for equally joint account with me.*"

136 bales, *belonging to a gentleman in Richmond, Virginia, on which A. C. Lamar made advance.*"

Record 198, in Denver & Peck's final brief, will be found these 32 bales, as proved by Perry, and they are proved by Perry as Sea Island, (R. 63;) and this summary of Denver & Peck, Mr. Dickerson says, *does* make out what was to be recovered for.

On page 23 he says:

"The object of this brief [Mr. Lamar's, R. 203] and its effect were to explain to the court and account for all the cotton which was taken from his possession in Savannah; whereas the lawyer's brief of Denver & Peck was confined to proof of *ownership* in a certain amount of cotton which was taken out of his possession in Savannah, and makes no reference whatever to the unimportant and irrelevant questions connected with *other cotton than that for which they were seeking to recover.*"

Hence this 32 bales of Sea Island and the Gue cotton were to be "*recovered for.*" The same 32 bales are claimed by Mr. Lamar's brief, (R. 203.)

Then the item of 136 bales bought of Gue are claimed in both Denver & Peck's brief, (R. 198,) and in Mr. Lamar's, as items 2 (50 bales,) and item 3, (86 bales,) making 136 bought of Gue, (R. 204.)

Thus by this most solemn act of his life, when men, if ever, are honest, does this claimant avow and declare—and this when all his petitions save the last were in court—that he *had* sued for these two lots of cotton—32 bales Sea

Island and 136 bales bought of Gue, and that one of them belonged to his son's estate, and the other (the Gue cotton) the son owned with the claimant jointly. Then the two briefs filed just before the judgment concur in claiming and demanding judgment for these two lots, neither of which belonged wholly to claimant.

Please observe that the present point, under immediate consideration, is not *mainly* the point that these 32 bales of Sea Island cotton, and 136 bales of Gue cotton, were necessarily included in the judgment—although these facts tend to establish this also. But the present point is a refutation of the main intention of the opposing brief, namely, that the record shows that the claimant, in the Court of Claims, did not *mean* to recover the cotton in which his interest was limited, as in the 136 bales in dispute, and that this is especially shown by the character of the last filed petition.

Mr. Dickerson (p. 23) is careful to say and insist that whilst Mr. Lamar's brief was meant to show what cotton was taken out of his possession at Savannah, on the contrary, his lawyer's brief was devoted to showing what cotton "*they were seeking to recover.*" And yet we have, in the will of Mr. Lamar, made just before filing his last petition, and after the filing of the prior three, again solemnly asserting that he had filed in the Court of Claims a petition for at least three specific lots in which his interest was special and limited, to wit, the 32 bales of Sea Island, the 136 bales of Gue cotton, and the 136 bales belonging to a party in Richmond, being that now in dispute. Then we have added to this evidence of intention to include cotton in which his interest was limited and special, the fact that his lawyer, when dealing, as Mr. Dickerson says, alone with the question of "ownership," and showing what "they were seeking to recover," sets out, by name, and specifically, these two lots of 32 bales of Sea Island and 136 of Gue cotton, in *both* of which, confessedly, if the will tells the truth, his interest was limited and special.

In addition to these conclusive proofs of *intention* to recover for cotton in which claimant's interest was limited, we will presently come to other proofs furnished by the claimant after his recovery, which are (if human testimony ever is absolutely conclusive,) proof conclusive of the intention to claim and recover for cotton wherein claimant's interest was a limited one.

It is impossible, in view of these facts, to resist the conclusion that the *intention* of the lawyer and of the client was to recover just what the Court of Claims had so recently indicated and on that day solemnly held to be recoverable, and which was then the unreversed law of the court, (8 C. C., 452,) to wit, for interest represented by Mr. Lamar, as trustee, in cotton of which he was not the "absolute owner," but was, as to some of it, if not all, a surviving partner or trustee merely.

No Evidence of Lamar's Absolute and Sole Ownership.

The next point in the opposing brief, made in resistance of our claim, that the 136 bales in dispute were included and *meant* to be in the judgment to which we wish to refer, is that wherein he asserts (p. 15) that "every bale of cotton, for which Mr. Lamar recovered, is traced and identified by witnesses; and the amount which he proved himself to have owned is greater than the amount he recovered for by several hundred bales, without any reference whatever to the 136 bales claimed in this case."

After making this statement, Mr. Dickerson, instead of going to the *testimony* for the purpose of sustaining his assertion that "every bale of cotton for which Lamar recovered is traced and identified by witnesses, and the amount which he proved himself to have owned is greater," etc., flies to the *brief* of Hughes, Denver & Peck for the purposes of making this point out. He says, "a *convenient* way to follow the testimony is to take the brief."

Mr. Dickerson's point is that the proofs establish the claimant's ownership to be *exclusive of everybody else* in more cotton than he recovered for. Our reply to this point is a direct and peremptory denial of the accuracy of the assertion.

It is not true, as a matter of fact, and the record shows it not to be true, either that the brief of Denver & Peck was *confined* in its claim of recovery to cotton in which no one else had an interest than the claimant, or that the proofs so show. On the contrary, we have above pointed to two items of cotton, to wit, the 32 bales of Sea Island and the 136 bales of Gue cotton, as to which the will of Mr. Lamar declares that he was not the full owner, and it describes the kind of interest that he held along with his son Charles.

Now, it will not avail for Mr. Dickerson, in the endeavor to escape from this solemn admission of the will, (and the other admissions named below,) that he did not own these two lots himself, by setting up a resort to (as he does on pages 34 and 36) the "weakness" and the "distress, (p. 34,) etc., in which Mr. Lamar was at the date of and after making his will, or to the plea that Mr. Lamar was "*simply mistaken.*" Mr. Dickerson alleges, in one part of his brief, that Mr. Lamar "*knew*" what he was talking about in this case. He alleges that Mr. Lamar *drew the last petition* in the case himself, and the one on which it was tried, and this *after* he had made his will. He compliments Mr. Lamar for his "*scrupulous accuracy*" in preparing this last petition. (See p. 12.) He displays him, all through the case, as a man of most extraordinary ability, accuracy, and acumen, except when it comes to be necessary to get clear of the admissions he made so repeatedly regarding these 136 bales, and averring both that they were *meant* to be recovered for and *were* recovered for.

So that these facts are incapable of fair denial—(1) that the brief of Denver & Peck is *not* confined to cotton in which the claimant was "sole and absolute owner," this

being established by uncontradicted and most solemn admissions of the appellant's testator himself, made in his last will; (2) that the face of the brief of Denver & Peck (R. 197, 198, 199, and 200) claims for the same cotton named at the end of the last petition filed in the case, in which Cheever and Charles Lamar had interest as partners with claimant.

On page 200 of Record, in Denver & Peck's brief, it is expressly stated, by quoting from the testimony of Lawson, that Cheever had an interest in a portion of the cotton sued for by claimant in this case, this interest being to the extent of *one-third* of the profits; and then, on the same page, the brief asserts that Mr. C. A. L. Lamar, the son of the claimant, whose name appears frequently in the transaction, had only an *interest in the profits.*

As already remarked, Mr. Dickerson says these lots were lots in which, along with the claimant, Cheever and claimant's son Charles had an interest as special partners. Now, a special partner's interest in the partnership property is as distinct, as well protected and recognized by the law, as any other partnership interest; and a special or general partner, so far from being full, absolute, and exclusive owner of such partnership property is, as we have above said, not allowed, as against his copartners, to misappropriate or divert from the partnership purposes any such assets.

Says Parsons on Contracts, (vol. i, side p. 185, 6th edition:)

"If a partner applies the partnership funds to the payment of his own debt this act is void, although the creditor did not know that the funds belonged to the partnership." (Then note S cites the numerous authorities, including the case of Rogers *vs.* Batchelor, 12th Peters, 701.) The author then continues, "and a purchaser who buys partnership property from a partner, knowing the transaction was a fraud on the firm, may be held a trustee for the firm," and cites the authorities in note S.

And Mr. Dickerson's contention (p. 14) that Cheever and Lamar were not general but special partners with claimants in two special ventures in cotton purchases, does not even tend to relieve him, since it is thoroughly settled that all living partners must unite in an action for partnership property, whether the partnership were special or general, and the joint partnership owners of a joint fund must join in a suit for the fund. (Osborne *vs.* Harper, 5th East., 225, and note 2, sec. 649, Collyer on Partnerships.)

Hence, most clearly, the limited and special interests named at the end of 4th petition (R. 59 and 60) were not claimant's sole and absolute property, could be sued for at common law only in the name of the living partners, including Charles, unless claimant held the additional relation of trustee or factor, as described in Villalonga, (8 C. C., 452.)

The truth is, so far as relates to claimant's absolute ownership, that this brief of Denver & Black, in its averment as regarding "ownership" of Mr. Lamar in the cotton claimed, amounts, in its substance only, to what is said on page 202, that he received over the railroad consigned to him with "every *indication* of ownership, and on which he paid the freight, 3,929 bales; that he stored in his warehouse and in his building rented by him for several months, and in some instances for several years, 3,755 bales, etc."

It is the shipment to him in his name; it is the receipt by him with the *indicia* of ownership; it is the storing in the warehouse; it is the taking of it out of his possession that this brief relies upon as proving the "ownership" the brief is talking about; and it is *not* the proof of witnesses or of documents showing any "absolute ownership."

Evidence on Ownership.

Turning now from the brief to the testimony upon this point as to what it shows regarding Mr. Lamar being the

full and exclusive owner, we are led to the same result, to wit, that absolute ownership is not proved in the Court of Claims. On the contrary, the moment you turn to the witnesses who were relied on in the Court of Claims, you find that they refused or omitted to answer anything in favor of the claimant's absolute ownership.

Now, turn to the testimony, and to all of it. Take, first, the 32 bales of Sea Island cotton mentioned in the will as belonging to his son Charles, (R. 17.) It is Mr. Perry who proves this, (R. 63.) He does not swear that it belonged to the claimant; he states that it was marked G. B. L. & G. B. Lamar; but he also states that it was simply claimed by the claimant, that the cotton was on the premises of Charles, but he does not profess to know anything about the ownership except what was told him by claimant.

Take, next, the testimony of Hardee, (R. 65.) He swears Lamar was surviving partner of Cheever, as he was told by a watchman that the cotton was shipped in Lamar's name, and adds: "I have no means of knowing anything in regard to Mr. Lamar's individual ownership or of his ownership as connected with the Georgia Importing and Exporting Co., except such as I have stated. *I cannot, therefore, speak in regard to any cotton at this press belonging to that company, not having taken the marks, as above stated.*"

Take, next, Mr. Hamilton's testimony. He swears (p. 77), "*I know nothing of the ownership of the cotton, except from the returns made to Colonel Ransom.* The claimant was president of the Georgia Importing and Exporting Company. I was one of the directors in the company, as also was Mr. A. A. Solomons and C. A. L. Lamar. I do not recollect who the others were. *All the knowledge I have of the cotton belonging to the company I derived from the claimant.*"

Then take the witness, Edward Breen, (R. 74 and 75.) It will be seen by examining that testimony that he does not pretend to have any knowledge in regard to the owner-

ship of Mr. Lamar. He says he hauled no cotton for the Georgia Importing and Exporting Company, but did it all for Mr. Lamar. "The orders were all given me by Mr. Lamar. I heard of the Georgia Importing Company in the streets. I know no difference. Mr. Lamar gave me no instructions about that company at all."

Mr. Meinhard (Record 62) swears to nothing about the ownership, except that the cotton sold by him was bought by Charles A. Lamar, claimant's son, for his father.

Then take Mr. Jos. Ehlen's testimony, (R. 91.) He was asked this question: "You mention some cotton, the owner or claimant of which was not known at the time. Have you since ascertained who the owner was?"

"Answer. No, sir; I have not since ascertained. I have heard it rumored that it was Mr. Lamar's cotton, but I do not certainly know."

On page 92, on cross-examination, he is asked: "Have you any personal knowledge of the ownership of the cotton?" He answers: "*I have no personal knowledge.* I can only state what was reported to me."

This is one of the most important witnesses in the case. This want of knowledge of ownership applies to all the cotton. As to none of it did he pretend to know the ownership. The remark, on page 91, about not having ascertained the owner, applies to 112 bales, and as to that he did not know the name even of the claimant. (See bottom of page 198, where Denver & Peck admit this.)

Then take Mr. Lawson, (p. 96.) Near the top of the page he swears that his understanding was that Lamar furnished all the money, and Cheever, who furnished services in purchasing the cotton, was to receive one-third of the profits. He makes the quantity that Cheever thus bought in partnership to share the profits, 5,768 bales, (R. 97.) He was the book-keeper of the Bank of Commerce of Savannah; also book-keeper for claimant, (R. 95.) He says this cotton was stored in Florida. He was not familiar with

the storage. Swears he left Savannah in 1863, and cannot state the amount of cotton owned by claimant, (R. 97.)

P. 98 he swears that claimant was president of the Georgia Importing Company. Swears Mr. Lamar was president of the Bank of Commerce. (R. 50.) Swears that of the 5768 bales bought by Cheever in partnership for Lamar, 2500 were sold to the Georgia Importing and Exporting Co., and swears in answer to the question "Do you know anything about these purchases by the Remingtons, except from seeing the papers which had been offered here as exhibits?" "No, sir; except from conversation with Cheever, and from the fact of making up money packages in the bank and giving them to him when he was going on these expeditions." Says he cannot positively state that the claimant had any cotton at Savannah; could not positively say that he had not.

Then John Sullivan (R. 70) testifies in regard to the 136 bales of Gue cotton mentioned on page 17 of Mr. Lamar's will as "bought by C. A. L. Lamar of S. Gue, and paid for by him at 16 cents per pound for equally joint account with me." This witness does not pretend to know who owned the cotton. He received it in Mr. Lamar's name. Part of it was marked Lamar & Cheever, mostly marked J. J. W. Swears in these words (p. 70): "I received no cotton except in Mr. Lamar's name, and that of his son C. A. L. Lamar. I know nothing of the business relations between the father and the son."

Mr. Coles (R.117 and 118) testifies in relation to the Florida seizure. All he says about ownership is on page 118, where he says:

"This cotton was purchased from the above named parties by W. W. Cheever, the agent of G. B. Lamar, the claimant."

Then on pages 118 and 119 Mr. Cotton testifies. All he swears to about ownership is that this lot of cotton seized

in Florida was a lot sold to Mr. Cheever, "and I understood at the time that it was seized as the cotton of G. B. Lamar." His testimony (R. 119 and 120) is in regard to the Florida cotton. He swears, "I sold some cotton to a Mr. Cheever, but did not know that he was the agent of G. B. Lamar, or any one else." This is all he knows about ownership.

Mr. Croon (R. 120 and 121) testifies about the Florida cotton. He simply testifies to selling to Cheever, agent for Lamar, 82 bales of Sea Island cotton, and which were seized as the property of Lamar. This is all he knows or says about ownership. Evidently he spoke merely from hearsay.

Mr. Simkins (R. 122) testifies to the Florida cotton. This witness testifies to selling cotton to Mr. Cheever, as agent for Lamar, (p. 123,) and swears that Cabell seized it as the property of Lamar. This is the substance of his testimony on ownership.

Mr. Bellamy (R. 123 and 124) testifies to this Florida cotton. He testifies that he sold to Cheever, as agent for Lamar, some cotton, and that it was seized by Cabell. This is the Florida cotton.

These, we believe, are all the witnesses named in the brief of Denver & Peck as having proved the title to the cotton. A glance at this evidence relating to title shows why Mr. Dickerson's brief found that it was a "*convenient*" way to follow the testimony by taking the brief of Hughes, Denver & Peck instead of the evidence itself, (p. 15.) The "convenience" is in the fact that had he taken the *testimony* instead of the *brief* he would have found *no* evidence of *exclusive* title in Mr. Lamar, with, perhaps, the exception of the Florida cotton, and hardly that. Not a witness in the entire case gives such testimony regarding the matter as would show that this president of the Importing and Exporting Company and president of the bank which supplied the money in buying this cotton was acting

exclusively for himself or not. It was, no doubt, enough testimony to authorize a recovery by Mr. Lamar, claimant, under the law as laid down in Villalonga's case, (8 C. C., 452.) But it is not enough testimony to show that *he and he alone* was the *full* and *absolute owner* of any of it.

There is much more on this subject of proof of exclusive ownership that will be found in our associate's brief, but surely this is enough to establish the proposition which we stated above, to wit, that it is not true that "every bale of cotton for which Mr. Lamar recovered is traced and identified by witnesses, and the amount which he proved *himself* to have owned is greater than the amount he recovered by several hundred bales, without any reference whatever to the 136 bales claimed in this case."

The Judgment.

On page 8, under the head of the judgment, the opposing brief asserts that it is certain, as any certainty can be, that the judgment of the Court of Claims was not for any cotton whatever except that which the petition claimed, and the ownership of which he proved, and adds that there is no word of proof in respect of the 136 bales which Mr. Lamar did not own.

The reply to this proposition is included in what we have stated above. When the question is, not as to what the evidence shows claimant's right of recovery would be under the law, as then held by the court in the Villalonga case, to wit, that a factor or a trustee might recover who had made advances for the whole property, but when it is whether the evidence shows "full, absolute, and exclusive ownership" in the claimant, then we repeat that it is not only not "certain as any possible certainty can be" that the judgment of the Court of Claims was not for any cotton whatever, except what the petitioner claimed, and the ownership of which he proved, in the sense of proving

absolute ownership; but, on the contrary, it is "plain as plain can be," that such absolute ownership is not proved, as distinguished from the ownership under which recovery could be had under Villalonga's case. In another part of this brief will appear what evidence there is to show that the 136 bales were recovered for, and especially is this covered by Mr. Herbert's brief.

THE EXPURGATED BRIEF.

On pages 19 to 25 is a discussion based upon Mr. Lamar's briefs. We will allude to these briefs below under another head. Here we wish to say in regard to the expurgations of the brief, stated on pages 20 and 21, etc., that this is introduced for the purpose of showing that, under the advice of counsel and second thought, Mr. Lamar struck out of his brief those parts which tended to claim for cotton advanced upon by his son C. A. L. Lamar, which were taken from his possession as aforesaid, and Savannah cotton advanced upon by his son, and for expenses incurred thereon by him and such like. The inference which Mr. Dickerson draws from this alleged expurgation of the brief is that on reflection and advice the claim for cotton advanced upon by his son, etc., such as the 136 bales, were deliberately stricken out of the brief, and ceased to be claimed as a part of the recovery. Now, there are several replies to this, for which we refer to the brief of our associate; but one reply is quite sufficient, and that is found on page 205, paragraph 26; and on page 203, paragraph No. 1; page 204, paragraph No. 2; and page 204, paragraph No. 3. As to these items in paragraphs one, two, and three being the 32 bales of Sea Island and Gue cotton, we have already above spoken. We have shown by a reference to the will, page 17, that they belonged to the same class where claimant had but a qualified interest, as our 136 bales belonged. Therefore, looking to these

paragraphs one, two, and three, it is demonstrated that the brief was not expurgated, or rid, of all claim for such qualified interest. On the contrary, they were left to stand. Then, as also in paragraph 26, page 205, it is express, positive, and unambiguous that the claim for "136 bales uplands, marked E. T. A. or E. T. Y. 69, and X. Y. Z. 67, advanced upon by C. A. L. Lamar for a person in Virginia," etc., and which were rebagged and pressed for the owner, were *left to stand in the brief as property claimed for.* Then the note to this paragraph 26 is expressed in the following words:

"The owner made inquiry for them since the war, but when informed of their being taken by the United States, declined to pay advances made upon them; 136 uplands."

"This parcel of 136 bales were received and the freight paid by Chas. A. L. Lamar, who had advanced money upon them. They were taken from the press-warehouses and from my possession, and constituted a part of the 3,553 bales."

Now, our point is to inquire if the object of the expurgation set out on pages 20, 21, &c., of the opposing brief was to *rid the case of all claim for cotton in which the ownership of claimant was not absolute, then why leave these stand, claiming items* 1, 2, 3, *and* 26, *in which the interest of the claimant was a qualified one, and leaving the brief to disclose expressly and as clearly as the stricken-out part possibly could do,* that the claim for these very bales in dispute, in which the interest was in C. A. L. Lamar, were left to stand? In the words at the end of paragraph 26, where they say: "The owner made inquiry for them since the war; but when informed of their being taken by the United States, declined to pay the advances upon them," we have Mr. Lamar's reasons for asserting his right of recovery as to these 136 bales.

Richmond Company's Ownership of the 136 Bales.

The next point we shall notice is the matter in the opposing brief under the head of 5th issue, pages 27 to 35. This issue is made by the allegation on one side (that of the appellee) that the Richmond Importing and Exporting Company owned the 136 bales in dispute, and that for this T. B. Lamar recovered $23,844.88, which is denied. Mr. Dickerson's contention is that there is no proof that this 136 bales was a part of the 244 which Hambleton testified (top of page 30 of the record,) he left with C. A. L. Lamar, and which was a part of the five or six hundred which he instructed appellee to send to Charles Lamar for compressing, and which were held subject to Hambleton's order. We shall mainly rely on Mr. Herbert's brief to consider what proofs there are affirmatively showing that the 136 bales entered into the judgment, though what we here add proves this also.

In regard to this 5th issue, we shall confine ourselves to a statement tending to show that *the 136 bales in dispute were received by C. A. L. Lamar, were seized by the United States, and that Mr. Lamar believed they were included in the judgment.* The proofs showing this last are in substance these:

First. Mr. Hambleton swears (R. 29 and 30,) that five or six hundred bales were, by his instructions, shipped to C. A. L. Lamar, at Savannah, by Mr. McCay, for compressing, to be held by the said Lamar subject to Hambleton's order, and that he received from Mr. Lamar at sundry times all this cotton, except 244 bales which he left with him.

And this testimony is uncontradicted, so that, at Savannah, in C. A. L. Lamar's hands are traced and left 244 bales of cotton which he received as a factor and agent for the Richmond Exporting Co.

Second. He swears that it is his impression that this 244 bales was a part of the cotton named in the account attached to McCoy's deposition. (R. 26 and 27.)

Third. If this cotton was ever seized by the United States it was seized about the date stated in the petition, (R. 57,) 25th of January, 1865.

Mr. Lamar's letter set out in the brief at pages 28 and 29, and in the record (pp. 15 and 16), is dated 24th of Sept. of the same year (1865), and is, therefore, written only eight months after this seizure. It would be trifling with evidence and with this court to stop to argue that this letter, as an instrument of evidence as against Mr. Lamar and his executor, is the highest, most satisfactory and best possible evidence of the truth of the statement it contains. Remember the letter is written by a man who was president of the Bank of Commerce—president of the Exporting Company—a man whose intelligence is such as that, according to Mr. Dickerson's brief, he wrote the petition on which the case in the Court of Claims was tried—a man who prepared one of his own briefs in the case—a man who, according to the opposing brief (p. 12), prepared his petition with the most "scrupulous accuracy;" one who is displayed by Mr. Dickerson as a man of integrity, of intelligence, and of remarkable ability! Such is the character given to Mr. Lamar by our adversary.

What then is the testimony of this letter of the 24th of Sept., 1865, regarding the point now under consideration, to wit, were the 136 bales in dispute received by the father from the estate of his son?

Observe now what are the elements of exactness and certainty, as bearing upon the present point, contained in this letter.

(A.) It shows that his son Charles was *dead*, at the date of its writing, as he is spoken of as his "late" son.

(B.) It shows that the cotton spoken of was held by that son.

(C.) It shows the character in which that son held it, to wit, as agent for Mr. Hambleton.

(D.) It shows how the cotton was marked—X. Y. Z., E. T. A.

(E.) It shows that it was "taken" and shipped to New York by the military of the United States in January last, (1865.)

(F.) It shows that the cotton was held for Mr. Hambleton, who was the agent of the Richmond Importing and Exporting Company, (R. 29.)

(G.) It shows that at that date, he, Mr. Lamar, had been making persistent and continued efforts to get paid for this very cotton; *thus by estoppel and confession establishing his relations to it as agent or trustee*, as it describes him as having applied to the President and to the officers of the Treasury Department, etc., etc., for pay for it.

(H.) It shows that there were charges against the cotton that he was seeking to collect, and which he asked payment of in this letter.

(I.) It shows that he was even trying to collect on account of this cotton, from Mr. Draper, of New York, its value, or the costs and charges against the same.

Now, there is no possible escape from the force of this letter, as proof conclusive that, through his son Charles, Mr. Lamar *received* and knew of the seizure of this cotton marked F. T. A. and X. Y. Z., and that it was held *for* Mr. Hambleton, the agent of the Richmond Company. If the proof stopped here, that this cotton passed into the claimant's hands, that it had these marks, that it was *received* from Mr. Hambleton, that he was the *agent of the Richmond Company*, it surely is proof conclusive on these points.

It stands utterly *uncontradicted and unimpeached* by anything in this entire record; so that this letter, written at the

very time when the transactions were fresh, *dum fervit opus*, is alone surely conclusive that this cotton, in September, 1865, had passed into Mr. Lamar's hands; that he was representing it in the endeavor to collect its proceeds and value, and that, as such, he held relations to the property, and that upon it he claimed the power and right to collect this money from the United States.

(4.) The letter of the 27th of April, 1874, by Mr. G. B. Lamar to Mr. Apperson, (see brief, p. 30,) is a new acknowledgment of Mr. Lamar, made in 1874, that he *had received* the cotton and the proceeds thereof, which are alluded to in the letter, and which were named in the letter to which this of the 27th of April is a reply. It identifies the cotton spoken about in this letter, and in the letter of Mr. Apperson to which this is a reply, by saying that it is "*the cotton I advertised for.*" It recognizes, *as a fact*, that he *received* this cotton; that he held himself accountable for it, and that he would pay for it to a party who should make the "*explicit proof*" there required. In other words, it is an explicit admission that he had received the 136 bales.

(5.) Notwithstanding what is said disparaging the strength of the proof found in the petition, filed the 16th of April, 1872, (p. 65,) by Mr. Lamar's attorneys, yet that petition does contain evidence of the most satisfactory character, showing that the lawyers, at that time, were endeavoring to sue for 136 bales of cotton on account of somebody in Virginia, whose name was not fully known, (as the first name is omitted,) but who was of Richmond, Virginia. Observe that the number of bales here mentioned in this petition is exactly the number claimed in this case. Observe that the place where this cotton was claimed is, like ours, Richmond. Observe that the cotton is, like ours, upland cotton. Observe, also, that the name of the party who claimed it, although inaccurately given, was imperfectly

known, because the *first* name is left a blank, as it stands in the print. Then especially observe that two witnesses, McCay (R. 36) and the president of the Richmond company, Harrison, (R. 48,) swear that no such a man as "Holland" could be found or was known at Richmond by those there resident, and that appellant has introduced no proofs that such a man ever was at Richmond, and that no Holland has ever come forward to claim these 136 bales.

These things put together, it becomes simply evident that, whilst the evidence in regard to the name of the owner was inaccurate, yet this unsworn petition was an endeavor to sue for the same cotton in controversy in this case, claimed at Richmond, and in quantity 136 bales.

(6.) Mr. Lamar surely *knew* whether he had received these 136 bales or not, and whether it was a part of the cotton that had been left by Mr. Hambleton, when he went to Europe, with his son. Mr. Lamar at that time had made his will. Hence the will is a most solemn admission that he had received these 136 bales, and that he had presented a claim therefor in the Court of Claims.

(7.) So, also, he knew whether he had received and had recovered for these 136 bales, at the time he made the journal entry in his books, (30th of April, 1874.) in these words: "The United States to suspense account for E. T. A. & X. Y. Z., 136 bales upland cotton taken from the press warehouse in 1865, of which the owner is unknown, and is advertised for in Richmond, Virginia, at $175.33, $23,844.88." And, so knowing, this entry becomes a new confession by Mr. Lamar that he had *received* this cotton from his son.

(8.) So when he published in the Richmond papers the advertisement found on pp. 20 and 21 of the Record, that "In 1864 some persons in Virginia placed two parcels of cotton in his son's possession in Savannah, which were stored

in his warehouse, and on which some advances were made, besides the storage and compressing and cartage, and that the cotton was forcibly and fraudulently taken by the military authorities of the United States without legal process; and that he had to-day received payment for the same from the United States Treasury, and asking the rightful owner to come forward and pay advances, expenses of collection, and prove ownership and receive the balance." He here again *confesses* to the fact that these 136 bales passed into his *hands* from his son, as trustee, and also that he not only *meant* to recover for, but that he *had* recovered for them. How it can be asserted by the opposing counsel that these proofs, *being uncontradicted as they are*, do not establish, beyond all *bona-fide* controversy or question, that the claimant G. B. Lamar *received* the 136 bales of cotton in dispute, is, we confess, beyond our comprehension.

The Assignment to McCay Valid.

At the present point in the preparation of this brief, the proof slips of a part of Mr. Herbert's brief reach us from New York, and a glance at it induces us to omit some points to which we meant to refer, and to pass over others more briefly than we had designed.

The argument of Mr. Dickerson against the validity of the proof of the assignment to Mr. McCay, owing to the failure to call attesting witnesses, we think is fully met by Mr. Herbert.

Assignment to Mr. McCay Valid.

We will, however, add some suggestions to what seems to us to be sufficiently covered by the brief of Mr. Herbert regarding the points in Mr. Dickerson's brief relating to the proof of the assignment to Mr. McCay, the want of legal *status* in the Richmond company, and a few other matters.

The uncontradicted testimony of Mr. McCay shows that an assignment had been made to him *by oral arrangement* before he came to sign the petition in this case. (See top of Record, p. 34.) The bill had been prepared *in his name*, by his counsel, and when he came to swear to it he asked for an assignment *in writing*, which was duly made, so that *before* the writing was executed it is evident that the assignment had been fully agreed upon, suit had been arranged to be brought, and the bill had been actually prepared in the name of Mr. McCay, and as a matter of precaution he required the writing to be obtained.

It will be hardly pretended, therefore, that an assignment of this cotton could not be made by parol, or that any writing was necessary.

First. The fact that a writing was afterwards resorted to prior to the swearing to the petition, making the assignment in due form, will hardly be claimed to have invalidated the prior verbal assignment.

Second. It appears by the attesting witness, R. A. Hills, locating his attestation at No. 7 Exchange Place, New York, (Record, p. 49,) that Mr. Harrison, the president of the company, executed this assignment in New York. Where Dunlop witnessed as to the signatures of McCauce, Elliott, and Apperson, directors, does not appear, but, no doubt, in Virginia, where it appears these men lived. Mr. Harrison, the acting president of the company, no doubt, has and had ample power to make this assignment, as the agent of the corporation, and this execution by him no doubt was sufficient to transfer the cotton. In this view this contract of assignment was executed in the State of New York, and the law of New York would govern the question of the validity of the contract. It is held in that State that the proof of handwriting of the parties to an instrument may be made *by the admission of the party himself, or proof of his*

handwriting without producing the subscribing witness. (Hall *v.* Phelps, 2 Johns., 451; Fox *v.* Reil, 3 Johns., 477; Shaver *v.* Ehle, 16 Johnson, 201; Henry *v.* Bishop, 2 Wendell, 575.)

Hence if it even were true, as it is not, that the verbal assignment to Mr. McCay which existed before he required a written assignment were not good in law, yet certainly the president of the corporation had power under the usages of such corporations to sign such contract making an ordinary assignment of a part of its assets. Having such power, he did in New York make it. Then he comes into court and swears he made it, and also to the signatures of the other directors. He thus, for himself and the corporation, in court confesses to the assignment and the due execution of the instrument.

Under such facts we do not think that anywhere—and certainly not in New York—the law requires that attesting witnesses alone shall be allowed to establish such signatures so confessed by the party who made the signature.

If this instrument is to be treated as made in Virginia, we submit that by the law of that State "every written instrument is *presumed* to be genuine if the party purporting to have signed it be living, unless he will deny the signature on oath." (See Rev. Stats. of 1849, ch. 98, s. 85, quoted in note to 1 Greenleaf, sec. 569, 13th edition.) The principal party, Mr. Harrison, by whom this instrument was executed, and whose power was sufficient to transfer this cotton, is not only living, but was, as we have said, a witness in the case, and swore that his signature was genuine and that the assignment was made.

Third. This question was not "especially" called to the attention of the court in the trial in the Circuit Court, so far as the record discloses, or so far as in any way appears; and hence it is *too late* to make the objection here. The familiar rule of the court is that which is expressed in

such cases as Houghton *v.* Jones, 1 Wall., 702, where the court holds:

"This court will refuse to consider objections to the documentary evidence of title produced on the trial of an action of ejectment, unless they are presented in the first instance to the court below, if they are of a kind which might have been there obviated."

Fourth. To these must be added all the suggestions so forcibly made by Mr. Herbert's brief, and especially that since the main question in this case was not an assignment to Mr. McCay, but the liability of a trustee, Lamar, to account to its owner for the proceeds of trust property which he had received, and the question of the assignment to Mr. McCay being collateral to that, this question of assignment is brought, we think, within the 5th exception stated in Mr Greenleaf, (13th ed.,) 5736, where the author says:

"A fifth exception to the rule requiring proof by the subscribing witness is admitted where the instrument is not directly in issue, but comes incidentally in question in the course of the trial, in which case its execution may be proved by any competent witness without calling the subscribing witness." See also Belknap, 6th Washburne, 433; Commonwealth *v.* Cassells, 20th Law Rep. (10 N. S.), 411.

STATUS OF THE RICHMOND COMPANY.

As to the point on pages 38 and sequel of Mr. Dickerson's brief, that this Richmond corporation was of such treasonous character in its nature and objects as shown by its charter, &c., that it could have no legal existence, and therefore could not own property nor transfer it, we would make the following suggestions in connection with the amply sufficient ones contained in Mr. Herbert's brief:

(1) That the authority relied upon by Mr. Dickerson, especially in 22 Wall., 100, is, it seems to us, directly against him. The full effect of that case cannot be better condensed than it is in the syllabus, in these words:

"Corporations *created by the* Legislature of a *rebel State* while the *State was in armed rebellion against the government of the United States, have power, since the suppression of the rebellion, to sue in the federal court, if the acts of incorporation had no relation to anything else than domestic concerns of the State*, and were neither in their apparent purpose nor in their operation hostile to the Union or in conflict with the constitution, but were ordinary legislation such as might have been had there been no war or attempted secession, and such as is of yearly occurrence in all the States."

Our point, as applied to the present case, and in view of this decision of the court, is this: That there is nothing *in the nature of the corporation* which makes it *intrinsically or necessarily* treasonous. Mr. Dickerson relies upon the language at the bottom of page 34 R., in the charter of this corporation, where the words are as follows:

"For the purpose of owning and navigating and freighting ships and other vessels engaged in foreign and domestic commerce, trading from the ports of the Confederate States."

Against this assertion we again place simply a denial. Not only is there nothing in the charter indicating *necessarily when* this trading would commence, whether *before* or *after* the raising of the blockade, nor *how* it would be carried on. Not only is it conceivable that *lawful* trading could be done "from the ports of the Confederate States," but the fact is that during the war much of such trading was practicable and done. In other words, under the various statutes and *proclamations* by the President (see sec. 5304 of Revised Statutes and cases in its margin) authorizing the purchasing of cotton and removing the same from the Confederate States under contracts and regulations of the Treasury Department, &c., commerce went on for years, and such trading was perfectly legitimate.

Again, it did not follow because at a certain time during the war the blockade continued that such blockade would

continue indefinitely, even *during* the continuance of the war, and therefore we again repeat that there is nothing in this *charter* which makes this corporation *intrinsically* and *necessarily* treasonous or unlawful. In other words, on its face it is not stamped with illegality. If not so stamped with illegality intrinsically, then the corporation, as a mere corporation or municipal entity, is perfectly valid.

We need not in this court cite authorities (as we might do) to establish that the illegality of such an institution will not be *presumed;* that where the nature of the organization itself, on its face, is not such as to make it necessarily illegal, it will not be *presumed* to be so.

The result then of all this is, that the corporation not being necessarily illegal, it could in law exist, and could transact, within the scope of its power, all lawful business; and its acts would become void *only* when it transgressed the national law. It is in this view that the case of The United States *v.* Insurance Company, 22 Wall., 99, is directly in point in our favor as sustaining the proposition that a Confederate Legislature could create a corporation, and that such corporation could sue in the Federal courts after the suppression of the rebellion, and could own and buy and sell property, and had for all these purposes a legal *status.* The cases cited in the body of the opinion of the court in this case sustain the same doctrine.

It is in obedience to the principle so often announced by this court, and repeatedly quoted in this insurance company case, regarding what acts are lawful when done under this Confederate authority, that this trading by this corporation is sanctioned by the court. To this language we beg especial attention as quoted from the case of Sprott *v.* The United States, (20 Wall., 659,) where the court says (22 Wall., bottom of p. 102):

"It is only when in the use of these powers substantial aid and comfort was given, or intended to be given, to the rebellion, when the functions necessarily reposed in the

State for the maintenance of civil society were perverted to the manifest and intentional aid of treason against the Government of the Union, that their acts are void."

Then again, as quoted on p. 103 from the case of Horn *v.* Lockhart, (17 Wall., 580,) this court repeats:

"We admit that the acts of the several States in their individual capacities, and of their different departments of government, executive, judicial, and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the constitution, are in general to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bonds of society, nor do away with civil government or the regular administration of the laws."

Now, this language of the Supreme Court applies as well to the acts of lawfully existing *corporations*, as to the acts of the State; and as applied to this corporation, we repeat here the words of this court, and apply them to this Richmond corporation:

"It is *only* when in the *use* of these powers substantial aid and comfort was given, or intended to be given, to the rebellion, when the functions necessarily reposed in the corporation for the maintenance of civil society were *perverted* to the manifest and intentional aid of treason against the Union, that their acts become void."

Accordingly, it has been held by this court, so often, that—

"A contract for the payment of Confederate State treasury notes, made between parties within the so-called Confederate States, can be enforced in the courts of the United States, the contract having been made of a sale of property in the usual course of business, and not for the purpose of giving currency to the notes or otherwise aiding the rebellion." (Thorington *v.* Smith, 8 Wall., p. 1.)

In Delmas *v.* Insurance Company this court went still farther and held that "the notes of the Confederate States in ordinary use as money during the rebellion might constitute a valid consideration for a contract, and that provision in the constitution of a State subsequently adopted and declaring such contract void, was one impairing the obligation of such contract within the meaning of the Federal constitution."

And this doctrine is again repeated in Union Bank *v.* Standard Bank, (16 Wall., 483.) In all these cases, and multitudes of others which we might cite, corporations created by the Confederate States for the purpose of issuing this Confederate money, issued only in virtue of its Confederate authority, have been held to be able to do all such business as legitimately came under their charters, provided the issue was not made in a contract itself treasonous.

These cases more than cover all that is necessary for us to maintain in regard to the legality of the existence of this Richmond company and its power to buy and sell cotton in the usual course of business.

What Mr. Lamar says about this cotton being "*compressed*" for the purposes of running the blockade, and about its being a corporation organized on purpose to run the blockade, and all that, has no manner of application here, because (1) there is no proof that any of this cotton ever transgressed the law, or (2) that anybody ever transgressed the law in either purchasing or disposing of or handling it.

It is certainly a very singular position in the opposing brief to ask that because these 136 bales of cotton were sent to Savannah to be "compressed," that, therefore, this court shall *infer* that this "compressing" was for the purpose of running the blockade; and then *infer*, from this purpose to run the blockade, that the Richmond company

was engaged in running the blockade, and then shall *infer* from its being engaged in blockade-running that its charter was void. This position is one which Mr. Dickerson, did we take it, would call "strange." Not a word of all this is in the record, and yet from this "compressing" of the cotton the court is invited to hold that this corporation had no power to sue, nor to assign to Mr. McCay for the purpose of suing. It seems to us that it is hardly necessary further to consider this point in the case.

As we have already remarked, all the points in Mr. Dickerson's brief are so ably and fully covered by the brief of Mr. Herbert that we think it, not only not necessary but, not proper further to continue this discussion; and we therefore close our discussion by saying to the court that we accompany this brief with a statement of facts drawn up by Mr. McCay, the appellee, which seem to us to be an exceedingly valuable contribution to the discussion of the figures in this case.

We especially had intended, prior to receiving the sheets of Mr. Herbert's brief, to have gone more fully over the proofs that the 136 bales did enter into the judgment and did belong to the Richmond company. But because these propositions are really included in and covered by what we have shown regarding what Mr. Lamar believed and meant regarding this, and especially because these are fully covered by Mr. Herbert, we will omit further remark upon them. It was an utterance of a celebrated British commoner in Parliament, made in reply to Mr. Cobden's quotation of the old saw, "Figures don't lie," that "*In skillful hands nothing lies like figures, except facts.*" Mr. Dickerson's use of figures in this case is fully up to the Cobden standard; and against his figures we ask leave of the court to set those of our client; which we herewith present to the court, and think that our figures are an exceedingly satisfactory and accurate elucidation of this case, in so far as the case

depends on the figures which so abound in Mr. Dickerson's brief.

We think these pages prepared by Mr. McCay, and filed as appendix to our argument, will be of real service to the court.

SHELLABARGER & WILSON,
For Appellee.

FACTS IN THIS CASE.

The claimant's cotton seized in the possession of G. B. Lamar.

Before the year 1864, the claimant in the court below from which this appeal was taken, bought at Augusta, Georgia, over 2,500 bales of cotton for the Richmond Importing and Exporting Company (Record, p. 23), whose assignee he now is. Of this he sent 1,500 or 1,600 bales to Savannah to C. A. L. Lamar who had a warehouse and cotton-press in that city, to be held subject to the order of T. E. Hambleton, the agent of said company (R. p. 24). This cotton was received and reported to the said agent (R. p. 30). In the autumn of 1864, the said Hambleton sailed for Europe, leaving 244 bales of this cotton in the warehouse of C. A. L. Lamar, subject to his order (R. p. 30). Soon after this, Savannah was captured by General Sherman, and in January, 1865, all the cotton in this warehouse and in Savannah was seized by the military forces under his command (R. p. 71), and "all the books and papers of this warehouse were destroyed" (R. p. 71). Before General Sherman reached Savannah, C. A. L. Lamar left the city, and delivered over to his father, G. B. Lamar, the cotton he held, and "it was taken from G. B. Lamar's possession" by the military (R. p. 201). In the autumn of 1865, Harrison Goddin & Apperson, a firm in Richmond, two of whose members were officers of said company, sent a letter to a friend in Savannah, inquiring about the cotton, in which they were interested, left there by Hambleton. This letter was shown to G. B. Lamar, who replied to it and said (R. p. 15): "Mr. Terrell showed me your letter inquiring about some cotton held by my late son Charles for Mr. Hambleton, agent, etc. It was marked XYZ & ETA; the exact number of bales I do not know, but it was taken and shipped to New York by the military forces of the United States, in January last." "There will be a bill for storage and compressing that cotton, which Mr. Hambleton will please provide for."

G. B. Lamar receives payment for claimant's cotton.

Nothing more was heard of this cotton by the officers of said company until April 19th, 1874, when an advertisement appeared in the *Richmond Enquirer*, over the signature of G. B. Lamar, in which he said (R. p. 20) : "Some time in the year 1864, some persons in Richmond placed two parcels of cotton in the possession of my son, Charles A. L. Lamar, of Savannah, Georgia, deceased, which were stored in Lamar's warehouse, and upon which some advances were made, besides the storage, cartage, etc. The cotton was taken by the military forces of the United States." "I have to-day received payment for the same from the United States Treasury, and the rightful owner is requested to come forward, prove his ownership, and receive the balance due."

Two days before this publication, G. B. Lamar made a "journal entry" in his private books of account, "in the following words" (R. p. 12) :

"The United States To Suspense Account
for ETA & XYZ 136 bales of upland cotton taken from the press warehouses in 1865, of which the owner is unknown, and is advertised for in Richmond, Va., at $175.33, $23,844.88."

This entry, on page 166, was duly posted to pages 15 and 43 in the Ledger, where "The United States was debited and Suspense Account credited with $23,844.88, one of these postings being dated April 17th.

J. L. Apperson, a director in said company, wrote to G. B. Lamar in reply to this advertisement, claiming the cotton, and in the correspondence which followed, sent to G. B. Lamar a copy of G. B. Lamar's letter of Sept. 24th, 1865, in which he had given the marks on the cotton left by Hambleton with C. A. Lamar; and G. B. Lamar, who had been, in early life, before he removed from Georgia to New York, a dealer in cotton, and was a perfect business man, conversant with all the rules and customs of trade, recognizing that the cotton about which he made the "journal entry" had the same marks as those he had himself given in this letter of 1865 for the cotton left by Hambleton with his son, and knowing that the marks on cotton are the designations by which it is bought and sold and known and transported (R. p. 24), and perceiving that the cotton, therefore, was identified, but no proofs of ownership given, said, in reply to Mr. Apperson (R. p. 21) : "I have yours with a copy of my letter to your firm of Sept. 24th, 1865, which has some direct reference to the case. Why is it that

your Mr. Hambleton, residing in Baltimore, has not been heard from ?"—thus calling attention to the necessity of the proof of ownership ; and adding : "I am only a stakeholder, and must account soon to my son's estate."

G. B. Lamar died in the autumn of this year, before the proof of ownership was given, and when this was presented to his executor, he declined, under the advice of his counsel, to settle for the cotton.

By this advertisement, by this entry on his books, and by this correspondence, which lasted several months, G. B. Lamar showed that he believed that he had recovered for the Hambleton cotton, and this belief, thus proved to the court below, became knowledge of the most positive kind, when it was proved that G. B. Lamar had brought suit in the Court of Claims for 3,275 bales of cotton in Savannah (R. pp. 52, 58, 196, 201 and 202), and received an award from the Court of Claims (R. p. 50) for the whole of the 3,275 bales of upland and Sea Island cotton, word for word and figure for figure, for the number of bales of each kind of cotton and the price of each as stated by his solicitor (R. p. 201).

This belief became knowledge, as G. B. Lamar was a perfect business man and in full possession of his faculties, and therefore knew what cotton he had claimed in Savannah, and as all of this was paid for, he knew that he had been paid for the 136 bales described in the journal entry.

Further evidence that G. B. Lamar recovered for this cotton.

In this suit before the Court of Claims, G. B. Lamar, after all the evidence had been submitted, and after his counsel had given in his brief, presented to the court an "additional brief" (R. p. 201) signed with his name and filed in the records of the Court of Claims on April 22d, 1873, which was duly certified before the court below in the present case (R. p. 13), in which he "specified the particular parcels" which he had before stated in general terms were "claimed by him as taken from his possession" at several places, and among others at "Lamar's Press Warehouses" in the City of Savannah, where, according to the "Journal Entry" the 136 bales for which he believed he had received payment were stored. These parcels are numbered from 1 to 28 and No. 26 (R. p. 205) agrees so minutely with the Journal Entry and advertisement before mentioned, that no one can doubt its identity. Both consisted of the same number of bales; both had two marks

which were the same; both were upland cotton; both were owned by a person in Virginia; both had been received by Charles A. L. Lamar; on both advances had been made by C. A. L. Lamar; on both there were dues for compressing; both were stored at the same place; and both had been taken by the military forces of the United States.

This brief, therefore, proves, 1st, that No. 26 was claimed, because he was there "specifying the particular parcels claimed;" and, 2d, that it was in Savannah, for it is stated in the discussion of No. 26 that it was part of the 3,553 bales which had been mentioned two pages before (R. p. 201) to have been on the eastern wharves of the city of Savannah. Now as all that had been claimed in Savannah had been paid for, as was shown above, the proof seems to be unquestionable, according to the records of the Court of Claims submitted in the case as evidence, that the claimant's cotton of 136 bales was paid for, and that the defendant owed the $23,844.88 which had been received for this cotton and sued for in the present case.

Facts which disprove the objections made by defendant to this conclusion.

Although this proof of indebtedness seems to be perfect; and although all the facts on which it is founded have been derived from the statements of G. B. Lamar himself, who knew all about the cotton for which he sued in the Court of Claims, even to the marks on every bale, the kind of cotton, the mode of packing, whether in square or round bales, the kind of ownership he held, the mode in which it had come into his possession, the persons who had seized it, the vessels by which each separate parcel had been transported to New York, and other minutiæ about each separate parcel; still the defendant knowing nothing personally about the cotton (R. p. 13) except what he learned from G. B. Lamar's papers, undertakes to show that G. B. Lamar was mistaken, and that the facts disprove the claim and the recovery.

The evidence of G. B. Lamar's thorough knowledge of the facts of this case is to be found in many pages of this evidence, but the statements about No. 1 in his additional brief may be cited as an example. (R. p. 203). Here he corrects the Quartermaster General as to the number of bales in this parcel of 32 bales, and as to the mode of packing, whether in square or round bales; tells by what vessel the 24 square bales were shipped; by what vessel

the 8 round bales were shipped; the numbers by which each were entered on the bills of lading; and that one bale had to be rebagged before shipment on account of the rotten condition of its covering. The denial of defendant is therefore a denial made by one who has no personal knowledge of the facts, of the belief and knowledge of his father who knew them perfectly. The defendant's counsel in the 10th page of his brief says: "The bill charges that G. B. Lamar sued for and claimed 136 bales of cotton held by defendant in trust for plaintiff," but that the "record of that suit establishes beyond the possibility of question that no such suit was ever brought by G. B. Lamar." This is bold, fairly stated, and exactly to the point. Now what are the facts and reasoning by which that statement is made good? The first is on the same page, that G. B. Lamar swore that "he owned the 3,275 bales claimed in Savannah" as by statute he must swear. The four successive petitions are then analyzed, and after that he concludes, "it is apparent therefore, on the inspection of the record, that G. B. Lamar did not sue for the 136 bales as the bill alleges and the answer denies." The argument is, that as the owner of the 136 bales was some person in Virginia, G. B. Lamar could not and did not swear he was the owner. That is, that the words owner are used in the same sense in G. B. Lamar's oath and in the description of the ownership of the 136 bales. But the record in the Court of Claims proves that the word is used in different senses, and there was evidence before the court below in the present case that the meanings of the word owner in G. B. Lamar's claim included one which exactly described G. B. Lamar's ownership in the 136 bales, and that the 136 bales were included in G. B. Lamar's claim. Of these three statements proof will now be given.

1st. That "owner" was used in different senses in the oath and in describing the ownership by the person in Virginia. The ownership of the 136 bales by the person in Virginia is mentioned in the third petition by the solicitors in the ordinary use of that word when one speaks on 'change, in the streets, or in common conversation. But these solicitors had sworn that G. B. Lamar owned 4,185 bales in the second petition (R. p. 54), and repeated this statement in the third petition signed by them (R. p. 56), and in this last, they mentioned that the 136 bales were held on account of a gentleman in Virginia, and that 256 bales were held on account of the estate of R. Thompson (R. p. 56), and that G. B. Lamar held these 392 bales (which had been stated to be a part of the

whole 4,185) as a commission merchant, "on which he had made cash advances, and in which he had therefore a special property until he sold the goods and reimbursed himself," thus showing that his solicitors, in their oath that G. B. Lamar owned 4,185 bales of cotton, used the word "owner" in a technical sense, which included the having a special property. Now the solicitors doubtlessly informed G. B. Lamar of this double sense when he made his oath; for G. B. Lamar was no lawyer, and in legal matters followed the advice of his counsel as other people are accustomed to do. So far this fact merely raises a presumption that G. B. Lamar in his oath used the word in the same way that his counsel used it.

2d. G. B. Lamar, in his fourth petition, swore that he owned 3,701 bales of cotton, of which 3,275 were in Savannah, and then adds that 446 were held in partnership with W. W. Cheever, who was interested to the extent of half the profits, and that 2,371 were held in a similar manner, two persons being interested to the extent of a third of the profits, and that "as to 256 bales claimed in this petition (R. p. 60), they were purchased and paid for by this petitioner for D. A. Martin, and were held by him to be delivered to said Martin on the payment of the price and charges."

These statements show that G. B. Lamar used the word "owner" in a technical sense, including three different cases in which he had paid the money for the cotton, but did not own it in the ordinary sense of that word.

This statement shows that G. B. Lamar was perfectly honest in his statement of his ownership, although it was not absolute, and that he used the word in a technical sense, which was wider than the ordinary meaning of that word.

This statement is not yet sufficient to include under the word ownership any cotton for which he had not paid the purchase money.

3d. G. B. Lamar, in his will executed September 28, 1872 (R. p. 20), which time was between the two dates when he swore that he owned 3,275 bales of cotton in Savannah, which will, though not in evidence before the Court of Claims, is in evidence in this case, and is therefore evidence before this court of the meaning attached to those words in his oath before the Court of Claims, the interpretation of which oath is now before this court.

In that will he says, item 7th (R. p. 17), "it is my will and

desire, and I hereby direct my executors to press my claims upon the Government of the United States for payment of the following cotton which are now before the Court of Claims," referring thus to this suit. He then enumerates the cotton about which these directions are given, and in the second sentence he mentions "136 bales bought by C. A. L. Lamar of F. S. Gue, and paid for by him for equally joint account with me." Now it is not important whether this claim could have been lawfully made in the Court of Claims. That suit has been decided, and the law regarding that suit is not now in question. It is the meaning of G. B. Lamar in the words which he used in his oath in that case which is now under discussion, and it is here proved that he used the word to include a partnership where he had not paid any money, but only had an interest in the profits, his partner having, however, deceased. In the next sentence he names a new partnership, and says 348 bales were included in that account, meaning a partnership in which G. B. Lamar and C. A. L. Lamar were equally interested, and in which sometimes one and sometimes the other furnished the money, the 348 bales including probably the 136 bales bought and paid for by C. A. L. Lamar and two purchases of Meinhard, one for 112 bales and the other for 100 bales, of which only the latter is here mentioned, but both of which purchases were made by C. A. L. Lamar, and both paid for to Meinhard by G. B. Lamar (R. p. 62). In the continuation of his instructions to his executors there is another parcel of cotton named on the next page, in which still another special ownership is mentioned. It is this (R. p. 17): "136 bales of cotton belonging to a gentleman in Richmond, Virginia, on which C. A. L. Lamar made advances." This is the cotton sued for in the present suit, and this paragraph gives the most positive testimony that it was included in the claim in which he had sworn that he owned 3,275 bales of cotton in Savannah.

Mention has now been made of seven claims included under the word *ownership* in G. B. Lamar's oath. But there is another. G. B. Lamar claimed and recovered the interest of W. W. Cheever and of C. A. L. Lamar in all these partnerships and special properties of both these partners who had died before the suit was brought. Of this eighth and last claim no proof can be obtained from the will. But there was evidence of it before the lower court in this case, and that evidence included all the seven cases mentioned before, and also this last and eighth case.

In G. B. Lamar's additional brief, as presented in evidence to

the court below (R. p. 13; Answer, 14), the grounds of his claim before the Court of Claims are expressly and explicitly stated, and they include every one of the eight grounds mentioned above. It is now asserted by the counsel in this case that these grounds were stricken out after the brief was filed, and are not in the final record of the Court of Claims. Nothing of this was heard of in the lower court; but whether it be in the testimony now or not is of no importance for the present inquiry, which is—What was the sense in which G. B. Lamar used the word owner in his oath before the Court of Claims? The interpretation of that word belongs to the present case, and must be decided by the testimony before the court below. And this proves, beyond question, that G. B. Lamar honestly swore to ownership in several cases not included in his enumeration of the technical or qualified ownership mentioned in his fourth petition, and that he included under this meaning:

1. His own absolute ownership.

2. His ownership where he had paid the purchase money and Cheever was a partner in the profits.

3. His ownership where he had paid the purchase money and both Cheever and his son were partners in the profits.

4. His ownership where he had paid the purchase money, and held the property for the real owner.

5. Where he had paid the purchase money, and his son was his partner in the profits.

6. Where his son had paid the purchase money, and G. B. Lamar was a partner in the profits.

7. Where his son had made advances on cotton, and thus had a special property before his decease.

8. For the partnership interests of both his deceased partners as creditor in possession.

The court below saw, and the Supreme Court will be able to see, that the presumption which defendant's counsel has raised

from G. B. Lamar's mention of his three qualified interests in the 3,701 bales claimed in the fourth petition, implied absolute ownership in all, except these three cases, is not only unfounded but disproved, and that the 136 bales claimed in the present suit are not only not excluded by his oath, but positively proved by the explicit statement of G. B. Lamar himself to have been included in his claim before the Court of Claims.

It would seem, therefore, that the bold and positive statement made by defendant's counsel, that the record of the court shows that no claim was brought for 136 bales in this suit before the Court of Claims, is not only unsustained, but that the exact opposite was proved by testimony before the court below drawn from the will of G. B. Lamar, which is in evidence in this case.

The defendant's counsel next announces the fourth issue, as it is called, and says the bill alleged that G. B. Lamar recovered for the 136 bales. "The record again sustains the answer to the bill, and shows that he did not recover one dollar for those 136 bales."

This is equally positive as before, but has not, as the preceding issue had, a slight presumption in its favor. Nor is a single sentence or statement given from the record to prove this. The record is ignored, and the brief of G. B. Lamar's counsel is taken up and followed for the whole of the proof. It is indeed asserted that the brief is supported by the testimony, but that is mere assertion, and is altogether erroneous.

The facts in the brief will, however, now be examined, and the assertion that the testimony given in the brief proves that no recovery was made for the 136 bales will be considered.

The first statement in the brief relates to the amount of purchases of cotton made by G. B. Lamar through his agents, and this is in the main correct, but that of itself is no proof that the 136 bales were not paid for, as the most of these purchases were made out of Savannah, and the claim and the recovery are for 3,275 bales in Savannah.

The brief, however, next undertakes to prove "that of the 3,966 (defendant's counsel's brief, p. 16) bought outside of Savannah, 3,929 were transported to Savannah."

It is very singular that neither the counsel of G. B. Lamar in the Court of Claims, nor of G. D. Lamar, his executor in the present suit, noticed that this contradicted entirely G. B. Lamar's oath in his first and also in his last petition. For in both he swore that 426 bales of his cotton bought out of Savannah

remained at Tallahassee, where it was seized by the United States and claimed by him, whereas this brief asserts that only 37 bales, the difference of 3,929 and 3,966, of all his purchases outside of Savannah remained in the country. Besides this, Mr. Lamar swore in his petition that 522 bales of his cotton were seized at Thomasville. Here are nine or ten hundred bales sworn to be in the country, never transported to Savannah, while the two briefs show that all but 37 were brought to Savannah. This proves most clearly how little these counsellors knew of the facts in this case. G. B. Lamar understood them, but neither of these counsellors had studied them or analyzed them, so as to make any fair conclusion from them. Neither of them touches any of the facts without making mistakes. This might have been shown by their conclusions about the petitions, which are very simple and easily understood; but the testimony about the purchase and recovery of 3,275 bales of cotton in Savannah cannot be thoroughly understood by any one since the decease of G. B. Lamar. The defendant's brief proceeds and says: "The result of that proof as shown by the brief is, that G. B. Lamar owned 380 bales bought in Savannah and transported thither 3,677 bales, making a total of 4,057 bales, which were his own and paid for by his agents, and of which the 136 bales formed no part. But, as G. B. Lamar only claimed 3,275 bales, this discrepancy in his favor of 782 bales can be explained by G. B. Lamar, if an opportunity is offered for doing so; the judgment of the court was for this reduced amount, rendered after the proof, which showed a greater amount to be his due." Now any person of common sense knows that if 4,057 bales could have been proved to have belonged to G. B. Lamar, he would have claimed them, and thus received more by $120,000 than he did receive. But the truth was, that the pretended proof was fallacious and false; and that G. B. Lamar could not, and did not, prove that he owned 3,275 bales exclusive of the 136 bales advanced on by his son, C. A. L. Lamar. The proof of this will now be given; and first, one of the bills included in the total of 3,929 bales transported to Savannah is for cotton of C. A. L. Lamar, and had therefore nothing to do with this proof. It is for 141 bales, and is No. 3, on p. 201. The bill itself is found (R. p. 185), and begins with tobacco transported for G. B. Lamar, and then goes on for 114 bales of cotton for C. A. L. Lamar.

The cotton part of this bill is therefore wrongly inserted in the table on p. 201 of the Record. The receipt No. 10, on p. 186, though for money paid by G. B. Lamar, is not for any cotton ever bought

or owned by him. It is all for Sea Island cotton, and he only had 199 bales of Sea Island cotton in his "additional brief," which gives an account of all cotton claimed, and as Sea Island was more valuable than the other, this name would not have been omitted. The 199 bales constitute Nos. 1, 8, 9, 10, 11, 12, 13, and are for 32 + 82 + 9 + 28 + 22 + 20 + 6 or 199 in all, and on (R. p. 206,) the 199 are summarized as 199 Sea Island. The very same number of 199 is given in the will (R. p. 17, 18), and all of the marks given in the margin are identical with those mentioned in the brief. This gives three complete proofs that only 199 were owned. These 199 bales are all included in the receipts given a few pages before, excepting 32 bales (No. 1 of the additional brief), which were bought in Savannah and therefore could not be in the R. R. receipts. 82 are in No. 6 (R. p. 185) ; 9 are in No. 18 (R. p. 188); 12 in 26 and 16 in No. 28 (R. p. 192); 20 in No. 31(R. p. 193); 28 in No. 33 (R. p. 193). These make up the whole 199, which are in the "additional brief." All of these have the same marks as in the brief, and are thus fully identified. The proof is then complete that the 326 bales of Sea Island cotton in No. 10 were not owned or claimed by G. B. Lamar.

But this is further shown by receipt No. 33 (R. p. 191) where it appears that the 326 bales of Sea Island cotton of No. 10 were drayed from the C. R. R. to the cotton press for steamers *Lillian* and *Florie,* and therefore to be transported from Savannah.

It therefore appears that two of the R. R. bills whose cotton is summed up (R. p. 201) viz., No. 7 for 141 bales and No. 9 for 326 bales, were not for cotton received and stored by G. B. Lamar. These two make a total of 467, which reduce the total of 3,929 to 3,462 transported by rail to Savannah for G. B. Lamar and stored by him in Savannah.

The solicitors deducted some from the amount thus received by G. B. Lamar as President of the Importing and Exporting Company, but they deducted too small an amount. G. B. Lamar purchased through W. W. Cheever 5,768 bales of cotton on the plantations in Florida (R., p. 197); of this 2,500 bales were sold (R., p. 197 and 198) to this I. & E. Com. This sale was *bona fide*, but there could be no formal delivery and none was necessary, as it would be from G. B. Lamar to G. B. Lamar, President. The cotton remained on the plantations and some of it was transported to Savannah and included in the R. R. bills. Some of the bales so transported were indicated on these bills to be for the Importing and Exporting Company, but the officers of the R. R. Company who received the

cotton from the negroes who drove the wagons containing the cotton of the planters could not learn the exact ownership, and as it was of no importance, they neither found out the ownership of all nor reported it. Probably the planters themselves did not know it in all cases, as it was not necessary that G. B. Lamar should inform them. G. B. Lamar knew, and doubtless had it recorded on his books, and perhaps no one else knew. Of the number of bales thus transported and belonging to this company, there are two statements from G. B. Lamar in the evidence. One is in his additional brief (R. p. 206) that the Importing and Exporting Company had in Savannah 688 bales; and also (R. p. 18) the same statement is made.

These, therefore, must be deducted from the amount transported to Savannah for G. B. Lamar, and for which he paid the R. R. bills, because they were transported to him as President and not as an individual person. When so deducted from the total corrected number given above as transported to Savannah, viz., 3,462, they leave 2,774 bales as transported from the interior and stored in Savannah of G. B. Lamar's own cotton. To this must be added that bought in Savannah, which is given (R. p. 199) at 380 bales, making a total of 3,154 bales.

By these facts it appears, that G. B. Lamar did not have 3,275 bales in Savannah without including the 136 bales that C. A. L. Lamar had made advances upon. These facts dissipate entirely the proof given in the brief before the Court of Claims that G. B. Lamar had more than 3,275 bales in Savannah, and explain what the solicitor of G. B. Lamar said he was unable to explain, but that G. B. Lamar could do this, if an opportunity was offered.

These facts dissipate also in like manner the proof offered by the counsel of G. D. Lamar in the present suit, which is taken from the brief in the Court of Claims, and they prove exactly the opposite of the proposition of this counsel, viz., that the 136 bales must have been included in the 3,275, instead of what he asserted, that they could *not* have been so included.

Additional facts that prove the recovery of the 136 bales.

G. B. Lamar, in his additional brief in separate numbers from 1 to 28, "specified the particular parcels" of cotton he claimed (R. p. 203). These had been stated in his first petition (R. p. 52) to be at three places, Savannah, Thomasville, and near Tallahassee. In this enumeration, No. 27, of 426 bales is stated to have

been taken in Florida (R. p. 205), and No. 28 (R. p. 206), of 522 bales is stated to have been taken in Thomasville. If these two, which sum up 948, be taken from the total of 4,222 bales claimed (R. p. 206), they leave 3,274 for the claim in this brief at Savannah in the previous twenty-six numbers. This number, 3,274, is expressly stated (R. p. 206) "to be claimed by G. B. Lamar in Savannah." Now, of these twenty-six numbers, No. 26 is for the 136 bales sued for in the present suit. But it has been shown before that all the cotton claimed in the petition for Savannah of 3,275 bales were paid for (R., p. 50), 3,184 uplands and 91 Sea Island, making 3,275. It follows that the 3,274 of this brief, which were in Savannah, were paid for, and therefore the 136 bales claimed in this suit.

Evidence on which the Court of Claims decided.

G. B. Lamar swore that he owned 3,275 bales of cotton in Savannah. This was never denied by the United States solicitors, and was legal evidence before the court. G. B. Lamar confirmed this oath by showing that he had bought and had transported to Savannah about this number, his solicitors saying more than this number. G. B. Lamar further confirmed it by describing minutely in his additional brief every parcel of cotton he claimed. His solicitor, in his brief (R. p. 202) divided the 3,275 bales into 91 Sea Island and 3,184 uplands, and gave the average price of the Government sales of their Sea Island cotton in New York at $231.79, and of their upland $175.33, making for both $579,-343.61.

These figures the court followed exactly (R. p. 50) in their final judgment, and this oath was the lawful evidence on which the judgment was based, and not any proof submitted to that Court that he owned more than 3,275 bales.

The 136 bales belonged to the Richmond I. & E. Company.

In his letter of Sept. 24th, 1865 (R. p. 15), G. B. Lamar stated that the marks of the cotton left with his son by Hambleton, agent, who was the agent of the Richmond Im. & Ex. Company, (R. p. 23), were E. T. A. & X. Y. Z., which are the marks of the 136 bales mentioned in the "journal entry" (R. p. 12) to have been paid for by the United States. Now, the marks on the cotton are the signs by which it is bought and sold and transported and known (R. p. 24). These marks, therefore, identify the cotton

recovered as the cotton of Hambleton, agent of the Richmond Im. & Ex. Company.

But besides this proof of identity by the marks, there are several other signs which confirm this identity that will make it evident to all, even to those not conversant with the customs of trade :

1. Both the Hambleton cotton and the 136 bales were stored in 1864 ; (R. p. 24) for the first ; and (R. p. 20) for the second.

2. Both were stored in Lamar's warehouse ; (R. p. 29) for the Hambleton cotton ; (R. p. 205 taken with p. 203) for the 136 bales.

3. Both were stored with C. A. L. Lamar ; (R. p. 29), for the first ; and, (R. p. 20), for the second.

4. The owner of both resided in Richmond, Va.; (see R. p. 34) for the former ; and (R. p. 20) for the latter.

5. On both, advances had been made ; (R. pp. 26 and 27 ; items 2, 3, 4, 5, 6, 7, 8, 9, 12) for the former ; and (R. p. 205) for the latter.

6. On both, advances were made by C. A. L. Lamar, and not by G. B. Lamar ; (R. p. 20) for the former ; and (R. p. 205) for the latter.

7. On both there were dues for storage (R. p. 27, Item 10) for the first, and (R. p. 15) for the second.

8. On both there were due for compressing (R. p. 27, Item 6) for the first, and (R. p. 15) for the latter.

9. Both were rebagged in whole or in part (R. p. 27, Items 8 and 9 for the bagging and rope used for this) for the first ; and (R. p 205) for the second.

10. On both these were dues for drayage (R. p. 27, Item 11) for the first, and (R. p. 20) " cartage " for the second.

11. On both freight was paid (R. p. 27, Item 12) for the former, and (R. p. 205) for the latter.

12. About both a letter had been written since the war ; (R. p. 15) for the first, and (R. p. 205) for the second.

13. Both replies to this letter said the cotton had been taken by the military forces of the U. S., (R. p. 15) for the first, and (R. p. 205) for the second.

14. Both replies to this letter said there were advances due on the cotton. For the first, (R. p. 15); and, (R. p. 205), for the second.

15. In both, requests were made for payment of dues (R. p. 15), for the first; and, (R. p. 205), for the second, because declining payment implies a demand for it.

16. Both were upland cotton and not Sea Island (R. p. 23), because bought at Augusta, more than one hundred miles from the sea; (R. p. 12), for the first; and (R. p. 20) for the 136 bales.

So many minute coincidences place the identity beyond dispute.

There is, however, one apparent disagreement. The solicitors of G. B. Lamar, in the petition drawn up and signed by them (R. p. 56), and presented April 17, 1872, mentioned that "136 bales of the cotton claimed were held on account of —— Holland, of Richmond, Virginia," when they should have said "Hambleton." But it was shown on the trial that careful inquiry had been made for such a person as Holland, in Richmond, and no such person was found (R. p. 26, ans. 24) and (R. p. 48; ans. 43); and no such name is to be found in G. B. Lamar's papers (R. p. 28), while the name of Hambleton is mentioned by G. B. Lamar in his papers in connection with this cotton (R. p. 15 and R. p. 29).

Besides this explanation the solicitors may have made the mistake from not reading correctly the name of Hambleton in G. B. Lamar's letters to them; (G. B. Lamar would not have made it, for he knew, as is shown by his letter, Sept. 24, 1865 (R. p. 15), and by his letter of June 2, 1874 (R. p. 21), that the name of the agent who stored the cotton with his son was Hambleton) or by the printer who printed their brief, mistaking the name written by the solicitors, cannot now be known; but the likeness of the letters in the two names is such, that the one might be mistaken for the other in any manuscript where the handwriting was not good; and if so, this likeness would become a confirmation instead of an objection.

ASSIGNMENT.

The property in the proceeds of these 136 bales belonging to the Importing and Exporting Company of Richmond having been assigned to the present claimant by all its Directors, and their charter having vested in their directors all its corporate powers (R. p. 35), all their rights have passed to the claimants.

CHARLES MCCAY, *Claimant.*